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Oscar Hallam

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SOME OBJECT LESSONS ON PUBLICITY IN CRIMINAL TRIALS

By OSCAR HALLAM*

THE purpose of this article is to present some facts and to make some observations pertinent to the subject of publicity in criminal trials. We can easily agree that the major purpose of a criminal trial is to mete out justice to the accused, safeguarding the interests of both the accused and the state. Criminal courts are not established for the purpose of furnishing entertainments to the public, nor to satisfy popular curiosity nor even to educate or inform the public. Publicity in criminal trials is desirable, not for any of the purposes mentioned, but to the end that with a proper measure of publicity, there is a better chance that the accused may be fairly tried and his rights and the rights of the people of the state fairly conserved.

We can all probably agree that justice is best served by trial of cases in an atmosphere of calm, and that anything that tends to inflame popular passion, or create popular prejudice, or produce turmoil or disorder, is a menace to the fair administration of justice.

I can attempt no exhaustive analysis of conspicuous or notorious criminal trials. There have been too many of them. I shall select a few typical cases which are illustrative, and which seem to furnish some basis for constructive action.

The most valuable for study of all illustrative cases is the trial of Bruno Richard Hauptmann. The crime for which the defendant was charged, was one of the foulest in criminal annals, the prominence of the victims and the esteem in which

*Member of the St. Paul Bar and Dean of the St. Paul College of Law. Formerly Associate Justice of the Supreme Court of Minnesota. Chairman of the 1936 Special Committee on Publicity in Criminal Trials of the American Bar Association.

they were held, the pent up excitement during more than two years of search and lurid stories, all combined to make news of the case of interest around the world.

There never was a case so widely publicized. During the Hauptmann trial, Flemington, instead of Washington, became, for the time being, the news center of the United States. The case was characterized by an American writer as "The trial of the century," and by an English writer as "The most sensational American murder trial of the century." The statement made that there were in Flemington during the trial 700 newspaper men, including 129 cameramen, was probably not an exaggeration. Motor, plane, telegraph and telephone raced with each other to get the first copy to metropolitan New York for world-wide distribution. This little town, ordinarily with one telegraph operator, had forty-five direct wires, a special teletype machine connected directly with London, a direct wire to Halifax, quick service to Paris, Berlin, Buenos Aires, Shanghai, Melbourne and other capitals of the world. A million words a day over these lines was a slow day. There never was a case that lent itself to greater temptation to lurid or excessive publicity, never a case more provocative of trial out of court, never a case beset with greater menace of disorderly procedure. On the other hand, there never was a case which offered such an opportunity for charting out a course for the proper conduct of difficult criminal trials, for the greater the difficulty, the greater the opportunity. In fact, there never was a case in which publicity agencies and commentators and public argufiers were more unrestrained, never a case which furnishes a better example of things that ought not to have been done. In all, it was a case which was well characterized by the language penned by the Honorable Newton D. Baker in the report of the so-called Baker Committee to which further reference will be made, as exhibiting "perhaps the most spectacular and depressing example of improper publicity and professional misconduct ever presented to the people of the United States in a criminal trial."

There are so many facts in connection with this case that are conspicuous and illustrative that I shall take this case as a major part of my theme.

Details of this case are given in the report of a committee of the Section of Criminal Law of the American Bar Association submitted to the Section at the meeting in Boston in 1936.

This report represented practically a year of research and personal investigation. The report is given in full as an appendix to this article.¹ The information on which the report was based was obtained as nearly as possible at first hand. The printed record of testimony and proceedings on the trial, comprising eleven volumes, were carefully reviewed and every word said by court and counsel was read. The writer made a personal visit to Flemington, New Jersey, where the trial was held, visited the ancient court house, saw the diminutive court room with its small gallery, saw the room used during the trial for an improvised telegraph office, saw the place where broadcasting facilities were installed by means of which the proceedings of the trial were, for a time, surreptitiously broadcast, saw the place where board seats and tables, some of which still remained, were installed to accommodate one hundred thirty-five representatives of the Press, called upon the trial judge, contacted personally or by correspondence the attorneys for the state and the defense, read signed statements of writers who were present at the trial, read hundreds of newspaper and magazine articles dealing with the trial, confirmed newspaper reports by contact with the newsmen who made them, talked and corresponded with some of those who heard parts or the whole of the trial. No question has been made as to the substantial accuracy of the statements of facts in the report.

During the process of its preparation, and in July, 1935, a preliminary copy of the report of the account of the trial was submitted to the New Jersey court of errors and appeals. The court thought it inadvisable to give it publicity before the termination of the hearing of the appeal then pending. In deference to the suggestion of the court, the report was not presented at the 1935 session of the American Bar Association. After the appellate court decision, the committee, desiring to publish the report earlier than the 1936 session of the Section of Criminal Law of the American Bar Association, asked consent for that purpose of the Executive Committee of the American Bar Association. The executive committee published the conclusions and recommendations of the report but it was determined that the report itself would not be given out while Hauptmann was alive and under sentence of death. The report was finally submitted to the Section of Criminal Law at its session in September 1936.

¹*Infra*, p. 477.

I shall summarize the outstanding events of the Hauptmann trial, giving, on some points, more, and on some points, much less, detail than in the committee report:

CROWDS AND CONFUSION IN COURT ROOM

Inordinate crowds were permitted in the court room, far beyond the seating capacity of the room, and noisy crowds at that. The record of the court is the best evidence on this subject.

The trial commenced Wednesday, January 2, 1935. On January 4 the record shows the following:

"(laughter). The court: 'This confusion and laughter is getting to be a kind of nuisance. Unless it is stopped, I shall have to have the court room cleared. If people want to remain here and give the court a reasonable opportunity to reasonably try this case, they will have to keep quiet. Otherwise we will have to get along without any spectators. Now, Mr. Reilly, what is it you wanted to say?'

"Mr. Reilly: There was a voluntary statement on the part of the witness I would like to have expunged from the record and I would like to have her instructed only to answer questions.

"The Court: There was such confusion here that I couldn't hear it. Let it be repeated."

Notwithstanding this admonition, the record on January 7 shows that, following an answer of witness Miss Gow there was "Laughter and applause," and again the admonition, "That demonstration must not be repeated again. I have already had occasion to warn people that they must not applaud and they must not laugh in such fashion," and the further admonition that "If the spectators here persist in this sort of interruptions, I am going to clear the court room."

Again on January 9, however, there was "laughter" and the court said: "Let us understand about this thing. Unless the people can keep reasonably quiet in this room, there is no alternative but the rule will have to be to clear the court room."

Again on January 18 a similar warning was announced, with the comment, "There seems to be a coterie of ladies over in that direction of the room who spend a very considerable part of the time in giggling and laughing."

Again, on January 21, following an answer of a witness, there was "laughter" and the court said: "There is altogether too much confusion here and we must stop it." Criticism was voiced of the court officers and the court said:

"Some of the officers are here in charge of the jury. Many of them are at the doors, I assume, but there are officers sitting

around, apparently in this court room, having no oversight at all over the audience. The officers are here primarily for the purpose of keeping order. . . . The court has to rely upon the officers who are here for that purpose and I want these officers hereafter to take their stations down in the main body of the court room where this confusion and laughter arises about every fifteen minutes. I want these officers to see to it that that confusion and laughter is stopped."

Again on January 24 the court again warned the people to keep quiet in the court room and avoid all confusion.

A similar direction was given on the morning of Friday, January 25, and again the afternoon of that day, with special reference to the statement that the "aisle that leads to the room where the secretaries work must be kept open. The people who are impinging upon that aisle will have to clear it." And again on the same day the record showed "laughter." The court again admonished the officers and said:

"I want the officers to take those people out of the court room and, in flagrant cases, I want them brought up here in front of the desk and I am going to deal with them and I may mark them up quite some considerable, before I get through with them. I won't have this ribald stuff in this court room."

Again on the morning of Monday, January 28, the court said: "The people who would like to talk now had better go outside and talk outside. We cannot hold this court with the people talking among themselves. Have you polled the jury as yet?" The clerk: "I have not. They couldn't hear me." Later the same morning during the examination of Bruno Richard Hauptmann, the record showed "laughter." Mr. Reilly protested: "This laughter out here from these people the second and third time . . . I protest against it," and the court said, "Well, you are quite right in protesting. It would seem as if people who are permitted to come in here in some way, and who have not business here, ought to have decency enough to keep quiet."

Again on the afternoon of the same day, the court said to the attorney general: "Before you proceed, I wish to notify the officers that from this time forward people will not be permitted to stand in the rear of the court room as they are now standing. The situation, I think the officers have somewhat cleared, but they will have to do better from this time forward," and the court ordered, "From this time forward, until the trial is finished, after the seating capacity of the court room is well filled the

doors will have to be locked and spectators will have to be denied admission."

However, on the next day, January 29, there was again an admonition, "The people will have to keep quiet. Otherwise we will have to clear out the court room."

Again on January 30, during the examination of Mrs. Hauptmann, Mr. Reilly said: "Mrs. Hauptmann, I am going to ask you to speak just as loudly as you can, because we will want to hear you and you will have to overcome the noise in the courtroom, if possible."

Soon thereafter the record shows the following:

"Mr. Reilly: Your Honor, I am obliged to ask you again, please, to ask the spectators back here in this corner to keep quiet, because I can't question Mrs. Hauptmann.

"The Court: Yes, I think there are too many people standing there. I don't know just how they get in. Are those people that are standing there on seats, or how is it they are standing?

"Officer Huff: Standing on tables.

"The Court: Standing on tables?

"Officer Huff: These people right in here; and those are sitting on a radiator.

"The Court: Well, let them be taken out. Let those people that are unable to find seats leave the court room.

"A Voice: Your Honor, we have seats. These are press seats.

"The Court: Press seats?

"A Voice: Yes, Sir, but in order to work better and get a better view, we have been sitting on the table rather than standing up.

"The Court: Well, I am not directing any attention to you, but I see people standing up against the wall there. Now, this condition will have to be corrected. Mr. Reilly is quite right in protesting that there is confusion here which usually arises in the part of the room where the people are crowded and standing. Now, let the officers clear out these people that can't find seats."

After all this, on February 6, a communication came to the court from the gallery, stating that "there are people in the entrance to and from the gallery," and it was ordered, "The people who are standing in the entrance to the gallery and other people who are unable to get seated may retire."

The court's orders were adequate, but their enforcement in the little court room was committed to temporary bailiffs who did not measure up to the job.

The crowd was swelled by use of subpoenas issued ostensibly to witnesses but in reality to friends seeking a place in the little court room, which was barely large enough to accommodate the

newspaper reporters present in addition to the necessary functionaries in the room. More than a hundred such subpoenas were issued in one day.

It has been said that the Press exaggerated the crowds for the sake of an embellished story, but exaggeration could not add much to the cold Court record.

The Times could not have exaggerated much when it said on January 3 that "Constables on duty at the door admitted 275 spectators without passes to an already crowded court room . . . men and women sat on the window sills and jammed the small space between the bench and the wall,"

Or the Mirror, when on January 22, under the title "Court Jam," it said: "The Bronx subway was never like the court house here," or when it said on January 28 that "the fourth broken court room window was registered at 3:01 during a recess, so chocked to capacity are the window sills,"

Or eye witness Elsie Robinson, who wrote in a signed article in the Cosmopolitan magazine of two vivid impressions of the "terribly overcrowded" court room, "first, my firm conviction of Bruno Hauptmann's guilt, and second, my disgust at the curiosity seekers who jammed the benches and stood along the wall,"

Or eye witness Edna Ferber, who, in a signed article on January 28, 1935, described the court room as "a shambles . . . planned to accommodate perhaps a hundred, it was jammed with what seemed at least a thousand, seated, standing, leaning, perched on window sills, craning over balcony rails, peering through doorways."

CROWDS OUTSIDE

Crowds surged through the streets of the town, eye witnesses say, at the rate of 20,000 a day. They jammed the access to the court house, filled its narrow passageways and, on one occasion, even shattered the glass in the entrance door. With no thought of promoting the interest of justice they jostled and thronged as though at a circus or holiday event, buying eagerly and freely, from morbid venders, souvenir ladders, a reminder of the ladder which was one of the instruments used in the commission of the foul crime.

It is hard to fix responsibility for either the presence or the doings of a crowd, but these crowds within and without the court room furnished provocation, if not justification, for newspaper

articles with such flaming headlines as "*The Flemington Crowd*," "*It's a Sideshow, a Jamboree*," "*It's a Holiday, a Freak Show*."

ORGANIZED PUBLICITY

There was organized publicity on behalf of both the prosecution and the defense. Counsel for the defense gave out frequent published statements, announced in the newspapers his plan of defense in considerable detail, promised "bombshells" and to spring surprises. Before the trial the chief defense counsel broadcast arguments for the innocence of his client. In a public statement shortly after the trial, he characterized the verdict as "mob justice."

The state's attorney refrained at all times from broadcasting and refrained generally from public discussion of the case. He did, during the trial, hold regular daily conferences with the Press, as he stated, in the interest of accurate information. Following these conferences, newspapers published freely comments and forecasts purporting to emanate from the state's attorneys, some of which went much into detail.

On January 3 the Mirror carried, as "Lindy Case Lawyers' Views," parallel statements of what the prosecution and defense proposed to prove, embellished with some argument. The state was credited as saying, "We have an iron-clad case against Hauptmann and will prove that he murdered the helpless infant." The authenticity of this and of some other newspaper quotations is denied. Very likely the state's attorney's denial is right, very likely the Press unduly enlarged upon his conference statements, but such a result was not surprising.

Even the defendant himself issued bulletins during the progress of the trial, such as characterizing the testimony against him as "a lot of lies," and declaring himself as "unafraid." Some of the newspapers published these bulletins with avidity.

TELEGRAPH

From the proverbial small town service of a railroad station agent, who was also a telegrapher, with one messenger boy, the telegraph service leaped to one hundred men, besides messenger boys. No one would question that there was occasion for emergency service. One may disapprove of the fully equipped telegraph facilities installed in this little court house and in a small room adjacent to the small balcony of the court room. This was

just one of the things that converted the small court house and in fact the court room itself, into a vast news-distributing agency. Publicity and not the administration of justice was the theme in the minds of myriads of people who thronged the little Flemington court house.

CAMERAS

The court definitely forbade all picture taking during the sessions of the court. The order was no more effective than the orders to the court officers to preserve order. Newspapers published photographs galore, photographs of "Mrs. Lindbergh testifying," of "Colonel Charles A. Lindbergh on the Stand," and of "Hauptmann Juror No. 11," of whom it was said in the paper, "Every time he sees a news photographer's camera lens pointed his way he ducks, averts or cover his face. This picture was made at the trial today"—and manifestly it was.

SOUND PICTURES

In the balcony of the court room was installed equipment for recording sound pictures of all the scenes and occurrences at the trial. With this were connected wires or cables and instruments on the side wall of the court room. These instrumentalities were plainly visible, but not over-conspicuous, and were not offensive in themselves.

The record for February 4 shows the following:

"The court: . . . 'I very much regret to be informed that there have been taken in this court room some movie and talking pictures of the trial, and of course, it is well understood that that was done in defiance of the orders of the court, and I think it is equally understood that it must have been done secretly and by methods that are not commonly understood. Now, this subject matter will be investigated and my only purpose in speaking of it now at this time is to caution the officers that they will, by reason of the secret way in which these pictures are taken, have to be exceptionally vigilant in seeing to it that these contrivances, designed for making possible the taking of these movies, movie pictures and talking pictures, that those contrivances be excluded from the court room, and the officers will have to be very diligent and may be very ingenious to break up this practice. It is a problem and it is the problem of the officers to do the best they can to prevent these violations against the orders of the court. All such instrumentalities are to be excluded from the court room, it doesn't make any difference who undertakes to bring them in. The agents and employees of these companies

that are producing these pictures in violation of the orders of the court will be excluded from the court room."

NEWSPAPERS

Long before and during the trial there was a perfect riot of lurid publicity. Newspapers argued the case in headlines such as "Clues build an iron-clad case against Bruno," and on the other hand, "Fawcett [defendant's attorney] says he will split the case wide open."

Long before the trial, one newspaper picked out twelve men and women from rush hour crowds at Journal Square, Jersey City, and polled them, and in headlines announced their verdict as "Bruno guilty but has aids, verdict of man in street."

Both sides of the case were argued fully in the Press during the trial. There were arguments unfavorable to defendant such as, "Hauptmann shows signs of cracking," "Bruno alibi pierced," "Hauptmann's case crumbles," "Hauptmann seems . . . on the stand a thing lacking in human characteristics," and comments on his "senseless denials," and his "posing as an out and out madman," as "he told a story which he himself scarce seemed to believe;" sometimes, however, arguing for Hauptmann, there were such arguments as "Bruno witness blasts link to ladder wood" and that "missing inch proved boomerang to state."

The story of the Hauptmann trial shows what may happen on the trial of a case of burning importance and public interest even with a trial judge possessed of high character and eminent legal attainments and entertaining high ideals of judicial decorum. It shows the necessity of firm control from the Bench. It demonstrates that the maintenance of order cannot be left entirely to bailiffs, inexperienced emergency men, unaccustomed to large crowds and to the tension of the crowds, and without the training necessary for the occasion.

The Report of the Special Committee on the Hauptmann Case to the Criminal Law Section of the American Bar Association closed with sixteen specific recommendations, which are set forth hereinafter,² and to which the reader is now referred.

THE BAKER COMMITTEE

When the report was received by the Executive Committee of the American Bar Association in January 1936, as above

²*Infra*, pp. 507, 508.

stated, the recommendations of the report were published in full in the American Bar Association Journal, with a prefatory statement by President Ramson of the American Bar Association, and the executive committee voted that the Association create a special committee of its own members to act in co-operation with committees from press and radio organizations to work out sound and practicable standards as to publicity in criminal trials; the Journal also stating that "The recommendations as to the conduct of criminal trials will be the starting point for the work of the joint committee."³ The Hon. Newton D. Baker was named as Chairman of the Joint Committee. By oversight perhaps the "radio organizations" were not then invited to join in this co-operative movement.

The Baker Committee dissected the Hauptmann report and reviewed it in detail.⁴ The recommendations of the Hauptmann report formed the basis of the recommendations of the report of the Baker Committee. Of the sixteen recommendations of the Hauptmann report, the report of the Baker Committee said: "They have been carefully considered by the joint Committee. Omitting those which seem inappropriate to this report and consolidating others, we recommend. . . ." Then follow its seven recommendations. It recommends the first, second, sixth, ninth, and tenth. The third, eleventh and sixteenth are not mentioned. the seventh, eighth, twelfth, thirteenth and fourteenth, and fifteenth are in part approved. The committee felt that experience has not yet made it possible to take an unqualified position on the subject of the fifth, relating to sound registering devices.

The lawyers and the newsmen differed on one point, namely, as to the use of cameras or photographic appliances in the court room. The Baker Committee report, signed by Mr. Baker for the Bar members, by Chairman Paul Bellamy of Cleveland Plain Dealer for the Publishers' Group, and by Chairman Stuart H. Perry of the Adrian Telegram for the Editors' Group, quoted the recommendations of the Hauptmann committee:

"That no use of cameras or photographic appliances be permitted in the court room either during the session of the court or otherwise," and then proceeds as follows: "With regard to the foregoing recommendation, the committee is unanimous in recommending that the use of cameras in the court room should be only with the knowledge and approval of the trial judge, the lawyer members of the committee believe that in addition to the

³(1936) 22 A. B. A. Jour. 79.

⁴(1937) Am. Bar Ass'n Report 851 et seq.

knowledge and approval of the trial judge, the consent of counsel for the accused in criminal cases and of counsel for both parties in civil cases should be required to be secured. The newspaper representatives believe that the consent of the trial judge is full protection both to parties and to witnesses, and that no further requirement should be interposed."

The newsmen contended that "the public has, by constitutional guarantee, the right to the most complete information as to what is afoot in its courts," and that, "provided the picture is made without disturbing the decorum of the court or otherwise obstructing the ends of justice, the publisher of a newspaper has the right . . . both to make the picture and to print it," and that this right "is part of the constitutional privilege of the press to print the news, and also part of the people's constitutional right to be informed by its free and full publication."

The radio men were added later to the joint committee. They concurred in the view of the newsmen and contended that the same rule should apply to sound-registering devices as to cameras.

The differences between the groups are not so fundamental as they may at first seem. All agreed that there should be some proper regulation or restriction of publicity and of the taking and use of pictures in connection with the trial of a criminal case. My own views are expressed in the Hauptmann report, but it may be that it is not of vital concern whether the matter is covered by fixed rule or is subject to the approval of the trial judge. Any rules we may have for the trial of a case mean little unless we have a trial judge with a sympathetic will to enforce them, and if the trial judge has the will to do so he is generally able to regulate and conduct a trial and control its publicity without sacrifice of the dignity of well-ordered court room decorum, and without charge of invasion of the constitutional right of freedom of the press.

The House of Delegates of the American Bar Association, at its first session on September 27, 1937, heard the Baker Committee report and passed a resolution "That the committee report be approved to the extent that it has been concurred in by the three groups; and that the committee be continued for the purpose of obtaining, if possible, an agreement of the three groups concerned."⁵

However, the committee on Professional Ethics and Grievances which had been considering recommendations for amend-

⁵(1937) Am. Bar Ass'n Report 240.

ments to the Canons of Professional and Judicial Ethics had recommended to the Association a number of amendments and among them a new canon 35, which reads as follows:

"Improper Publicizing of Court Proceedings. Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the court room, during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted."

Through unfortunate lack of co-ordination this canon was passed by the House of Delegates at a session on September 30, 1937, without mention of the resolution of September 27.⁶

"The effect on the newspaper fraternity," said the chairman of the American Newspaper Publishers' Association Group on the joint committee, "was instantaneous." Commenting further on these resolutions, he said: "The American Bar Association . . . took the somewhat inconsistent position of adopting the Baker report and at the same time declaring through the New Canon 35 a very transigent attitude toward the press." . . . He complained that the lawyers had "asked us to co-operate with them to work out a formula by which we could live together in peace, and on the other hand kicked us in the groin."

However, the American Newspaper Publishers' Association in 1939 continued its committee, adding that "so long as the sentiment of the American Bar Association remains as set forth in the New Canon 35, your committee is not of a disposition to propose any further co-operative moves" but recommended that the committee be continued on the ground that the mere existence of these committees instructed to explore possible further co-operation is a healthy manifestation of good will."

The Bar Committee, at the session of 1939, again brought the problem to the attention of the members of the Association, and reported that it would not be surprising to find that the provision of Canon 35 will not be followed unless it meets with the approval of the general public, that its approval is, in a large degree, conditional upon the support of the Press and Radio which play such a large part in the formation of public opinion. The committee did not recommend the modification of Canon 35, but urged that the committee be continued "with the understanding that the sub-

⁶Ibid. p. 352.

ject matter of Canon 35 is not removed from the field of further discussion." There the matter now rests.

It avails little to spend time in criticism of the sins of omission and commission in connection with the Hauptmann trial unless we can profit by the experience of that trial and chart out a course toward better standards. It does seem that experience has amply demonstrated that such a course is practicable.

THE SOHL-OWENS CASE, ESSEX COUNTY, NEW JERSEY

One of the outstanding examples of what can be done is furnished by another trial in New Jersey in the Court of Oyer and Terminer of Essex County, namely, the case of *State v. Sohl and Owens*, the trial in February, 1938, of two girls under the age of twenty-one, who were tried and found guilty of murder in the first degree. The case was much publicized. It was front page news all over the country. While it did not rival the *Hauptmann Case*, it did give promise of a deal of flamboyant publicity. Judge Brennan, to whom the case was assigned for trial, undoubtedly had in mind the example of the *Hauptmann Case*. He created a committee of newspaper men composed of reporters from three local newspapers. On inquiry of the larger wire services and the leading New York newspapers, it was discovered that approximately twenty-five men and women would be assigned and in court daily, and the committee undertook to supervise their credentials. The co-operation of the court house board and superintendent was enlisted to make a physical layout to meet the necessities of the trial. Benches of ample proportion, numbered, were assigned for press purposes. On the press table were tags corresponding to the numbered seats, and indicating the reporter or newspaper to which such seat was assigned. Before the actual trial began, the court, in conference with all of the members of the press, indicated that no messengers would be permitted to circulate about the court room for the purpose of taking up newspaper copy, but court attendants were assigned at either end of the table, and any reporter could hand his copy periodically to whatever attendant might be near. This was transmitted by the court attendant to a press room opposite the court room proper, where the sending service had been set up for the various newspapers and press associations. In conference with the press and the photographers, the court indicated that no photographs would be permitted in the court room. The defendants, through their attorneys, were apprised of their right of privacy and the jurors

apprised as well of their similar right. A poll of the jurors indicated that it was not their desire to be photographed at all in the court and their wish in this connection was respected. The defendants, through their attorneys, agreed to have one photograph taken in the court room when the court was not present, and this was done. No other photographs were taken at any time in the court room, and the agreement with the court was complied with in all respects save that one photographer who attempted to violate this rule was promptly detected and as promptly disqualified. The opening on the prosecutor's part was a lucid and dignified projection of what the state expected to prove, and the opening for the defendants was on a like plan. The case proceeded with a minimum of legal pyrotechnics.

At the close of this case, the comments of the metropolitan dailies and of the local press were uniformly commendatory.

The Newark Sunday Call on February 20, 1938, had this editorial:

"The Sohl-Owens trial which attracted wide attention throughout the country demonstrated that sensational criminal cases can be conducted with decency and dignity without much difficulty. All that is needed is a firm judge and lawyers who are mindful of their professional obligations. Newspapers and the public take their cue from the Bench and Bar. Judge Brennan directed the trial with wisdom and justice."

CLEVELAND CASES

In Cleveland in 1937 the state had the difficult task of working up a case against two so-called labor racketeers. When the case was presented to the grand jury, the county prosecutor asked the newspapers to refrain from publishing the names of the witnesses who testified before the grand jury. The reason, as one of the publishers stated, being "as obvious as the nose on one's face," the newspapers gladly consented. Indictments were returned. When the case came up for trial, the prosecutor made a further request, namely, that the newspapers refrain from taking photographs of the witnesses in court. The reason was the same as before. As one of the publishers stated:

"The prosecutor was not quite certain that some of his witnesses would testify, as they had been threatened. He felt that if they were confronted with a battery of cameras and the certainty that their faces would be emblazoned all over the newspapers' front pages, a number of them would be under strong temptation to forget some of the testimony which they had given to the grand jury, if not openly to perjure themselves." Again

the newspapers consented, and this publisher added, "I could dig up a number of similar cases in Cleveland in the last few years."

THE TARQUINIO CASE
(Baltimore City)

The supreme bench of Baltimore City has since 1928 had a rule known as Rule 48 which provides as follows:

"No photographs shall be taken in any court room over which the supreme bench of Baltimore City has jurisdiction . . . nor so close thereto as to interfere with the proceedings or decorum thereof, while the court is in session, or at any other time when court officials, parties litigant, counsel, jurymen, witnesses or others connected with proceedings pending therein are present."

The court applied this rule on arraignment of Aurelio Marco Tarquinio, so-called torso murderer, a case which involved national publicity. The court, on its own motion, made an order signed by Judges Frank and Niles reciting that the character of the alleged crime

"has resulted in a great amount of publicity with respect to the circumstances surrounding its commission and the prospective events of the trial. The publicity has caused serious concern to the judges of this court, who are charged by the constitution and laws of Maryland with the duty of seeing to it that every accused person shall have a fair and impartial trial. It must be obvious to every citizen of Maryland that one of the essential conditions of a fair and impartial trial is that the defendant shall be tried only upon the legal evidence adduced in court against him, and that prior to his trial nothing shall be done which may improperly influence either the court or the citizens from among whom his jury may be chosen, whether such influence is likely to work for him or against him. It is the duty of the court, without application by the state or by the defense, to see to it that the constitutional rights of every accused person are preserved, no matter how serious the appearance of the crime or how revolting the manner in which it may apparently have been committed. It is equally the court's duty to see to it that the rights of the state are preserved against improper influences in favor of the accused. This duty of the court is the more imperative when popular excitement exists relative to a given case. The duty extends not only to persons who have been formally indicted, but also to persons who have been arrested and are in custody, with or without counsel, prior to indictment," and it was ordered "That in connection with any case which may be pending in this court, or in connection with any person charged with crime, and in the custody of the police . . . any of the following acts shall be subject to punishment as contempt:

- "(1) The making of photographs of the accused without his consent.
- "(2) The issuance by the police authorities, the State's Attorney, counsel for the defense, or any other person having official connection with the case, of any statement relative to the conduct of the accused, statements or admissions made by the accused, or other matter bearing upon the issues to be tried.
- "(3) The issuance of any statement or forecast as to the future course of action of either the prosecuting authorities or the defense relative to the conduct of the trial."

I am advised that there was no adverse comment by the newspapers on this action of the court and personal inspection of the files of the Baltimore papers reveals none. The orders of the court were obeyed.

UNITED STATES DISTRICT COURT OF MINNESOTA

In the United States district court for the district of Minnesota, prompted by the excesses of the Hauptmann trial, the judges, in May, 1936, adopted a rule as follows:

"No camera or other picture-taking device or voice-recording instrument shall be brought into any federal court building in this district, for use during the trial of any criminal case, or for use in any proceeding incident to any criminal case, or for use during any session of the United States grand jury."

In July, 1939, the federal grand jury in St. Paul began an inquiry of recent W.P.A. strike violence in Minneapolis, which resulted in two deaths. It was a tense situation. There was excited public discussion and front page newspaper publicity. Early in the investigation, Judge Bell, in charge of the grand jury, announced: "I have been advised that some of the witnesses are deathly afraid to come over and tell the truth before the grand jury and for that reason I am asking the cooperation of all the press that no names or identification of witnesses be given out or published if obtained." The judge barred reporters and the public from that part of the federal courts building where the grand jury met. He warned some newspapers which had taken photographs of arriving witnesses against publishing the pictures. The newspapers co-operated and acquiesced in the direction of the court. No names of witnesses—no photographs—were published.

Beset with difficulties have been some efforts of the Bar:

LOS ANGELES

In Los Angeles the Bar Association in 1937 complained that there was

"A growing tendency . . . to follow the pattern of the Hauptmann publicity; . . . photographs of evidence to be introduced," it was said, "were published in the newspapers, accompanied by statements as to what one side or the other expected to prove and thought would be the effect of it, also, by interviews of attorneys engaged in the case. Throughout the hearings the proceedings of the court were pictured and published in the midst of a running trial of the merits in the newspapers." On one occasion, it was said, representatives of the Bar Association had prepared "a large scrap book containing a hundred or two hundred pictures of court room proceedings taken during the progress of trials in the Los Angeles superior court."

There were radio attacks upon Los Angeles County superior court judges, and in one case contempt proceedings were instituted by the Los Angeles Bar Association against one man for broadcasting attacks.

In the latter part of 1937, the presiding judge appealed to the Bar Association for effective action to protect the court against recurrent attempts to influence judicial action, suggesting "a committee to be on lookout for improper statements over radio or in press that might have a tendency to hinder, delay or obstruct justice to the end that we may have more cases tried in the courts and fewer in the press."

The Los Angeles Bar Association on December 13, 1937, passed a resolution

"that it militates against the dignity of court proceedings and the respect which the general public holds for courts to allow radio broadcasting equipment or motion picture or sound recording equipment (except for official phonographic recording purposes) or to allow photographs to be taken in court rooms and the board of trustees recommends that the practice be discontinued."

The foregoing resolution was forwarded to the superior court judges. No action was taken by the judges.

Then came, in February, 1938, the trial of Paul A. Wright, charged with murder of his wife. During the Wright trial pictures were taken during court sessions and published with little or no restraint. The Picture Magazine "LIFE," on February 14, devoted a double page to court pictures taken during this trial. The magazine stated that "the photo-chronographic record of the trial has been extraordinarily complete; its highlights to date are

reproduced on these pages," announced as the "biggest day of the trial, when spectators saw Wright climb on the witness stand," told how "on the stand Wright's nerves cracked," and there are pictures of "Presiding Judge Ingall Bull (on the Bench), in the foreground the lawyers, at the right the jury," and Wright on the stand pictured in various stages of "cracking nerves" as he broke down. So complete was the "photo-chronographic record of the trial" that in one case a published picture taken by one photographer showed another photographer with his tripod set up at a corner of the jury box apparently taking a picture in the direction of the judge. Evidently both photographers were "shoot--ing" the proceedings from different angles at the same time. "LIFE" characterized the court room scenes of this trial as "*the most spectacular juridical circus since the Hauptmann Case,*" and well it might.

The Los Angeles Bar Association adopted a resolution condemning this type of judicial conduct and newspaper publicity and sent a copy to the trial judge. Thereafter the Bar Association created its committee on judicial independence. A section of this committee conferred with the district attorney's office, and that office cooperated in eliminating statements of counsel concerning evidence to be produced, and it is said the bar as a whole has cooperated reasonably well. A section on radio publicity conferred with representatives of broadcasters, met with sympathetic cooperation and arrived at a satisfactory solution of the question as far as concerns the radio. Conferences with representatives of the Press met with less success. The matter of court room pictures was finally presented to the judicial council. The council referred the matter to a committee and adopted a report of the committee that the practice of taking photographs in court room during trial was being "abused," that a rule prohibiting such practice was unnecessary because of the resolution of the California State Bar in harmony with Canon 35 of the American Bar Association, and adopted "as the expression of the views of the Council," the statement that the observance of the principles therein contained is "essential to the proper and orderly administration of justice." From several members of the council, there came suggestions that the controversy be adjusted amicably between the members of the bench and bar and those desiring to take photographs in court room, that "in the last analysis it is a matter for the consideration and enforcement of each individual judge in the conduct of his

court," that it seems better to try "to get the co-operation of both judges and newspapers."

There has been much reciprocal intense language emanating from both the Bar and the Press, but without treaty or entente "the taking of pictures of the proceedings during the trial of cases in our local courts," says the president of the Los Angeles Bar Association, "seems to have become practically a thing of the past," and in the more recent *Shaw Case* in Los Angeles in February, 1939, a case which lent itself to much publicity by reason of political prominence of the defendants, the presiding Judge forbade the taking of any pictures during court sessions. The device of simulated pictures was resorted to. A conference was had between the Judge, the attorneys in the case, representatives of the press and the State and Local Bar Association. Following this conference, there were no more simulated photographs of the proceedings on that trial.

No disciplinary proceedings were taken in connection with these cases. The Bar Association did, however, bring contempt proceedings against the Los Angeles Times Mirror, based on news and editorial publicity in other cases. Most important of the charges was that the newspaper, after conviction and before sentence of two criminals charged with assault in the course of a labor disturbance, published an editorial entitled: "Probation of Gorillas," in which the paper urged that "Judge A. A. Scott will make a serious mistake if he grants probation to Matthew Shannon and Kennan Holmes. This community needs the example of their assignment to the jute-mill." The Times was held to be in contempt for arguing editorially the question of probation while the case was pending for sentence, an appeal was taken and the trial court has recently been affirmed by the California supreme court. This controversy brought a barrage of newspaper criticism. The Bar Association was accused of seeking to "Nazify the Courts," to "create star chamber sessions." "Shall the people own the courts or shall the lawyers own the courts?," asked one. "Is it not the right of the people to know the truth, the whole truth?," asked another, and "actually, the desire, purpose and plan is to vest control of the courts in a Bar Association 'boss' or 'bosses'," said one. Another opined that "Physician cure thyself" might well be said to the Bar Association of Los Angeles County, "a county in which judicial scandals have been numerous."

It is easy to speculate as to what might have happened

under conditions which never did exist. It may be that if the judges had all taken control of the situation in Los Angeles, as did the judges in the cases cited in Newark, Baltimore and St. Paul and as all the authorities did in Cleveland, official firmness and diplomacy might have avoided much of the crimination, re-crimination and repressive litigation and might have avoided what "LIFE" characterized as a "Juridical Circus." Perhaps the situation was not subject to the same control that worked so well in these other jurisdictions. This much is certain, that the bench and other law enforcement authorities did control situations which presented difficult problems in the cases mentioned and did secure general co-operation of news distributing agencies and did secure satisfactory results.

While these things were going on in California an interesting case was proceeding in Oregon. In *Irwin v. Ashurst*⁷ the trial judge, with the consent of counsel, permitted the installation of a microphone in his court room for the purpose of broadcasting the proceedings in a murder trial. A witness for the state brought an action for libel, alleging that defendant's attorney in his argument to the jury used defamatory language, and charged liability against the attorney for uttering the language, against the broadcasting company for broadcasting the language, and against the trial judge for permitting the broadcast to be done. Answering the claim of immunity from liability for the defamatory words because published in the course of judicial proceedings, the plaintiff contended that the installation of the microphone in the court room for the purpose of broadcasting the defamatory matter was an "extra-judicial and illegal act" and that the absolute privilege of court and counsel does not extend to matter distributed "beyond the four walls of the court room." The court denied all of plaintiff's claim. It held that the installation of the microphone for broadcasting was not an extra-judicial or illegal act. The court said,

"Undoubtedly there is a diversity of opinion as to the propriety of installing a microphone in the court room for the purpose of broadcasting judicial proceedings, especially in cases involving sordid details of crime. This court is not prepared to say that it is unlawful per se to install a microphone in a court room to report judicial proceedings. The American Bar Association frowns upon such practice. It is a matter for the determination of the trial judge."

⁷(1938) 158 Or. 61, 74 P. (2d) 1127.

It was held that the rule of absolute immunity attached to both Judge and Counsel and that the fundamental principles of the law of libel applicable to publication of judicial proceedings by newspapers apply also to the broadcasting of such proceedings by radio stations.

GENERAL COMMENT

It is interesting to note the varying reactions from the events herein narrated, and the discussion and activities resulting from them.

Editor R. R. McCormick of the Chicago Tribune, a member of the American publishers' group of the Baker committee, in December, 1939, addressed the Bar of Chicago on "Newspapers and the Law." The foreword of his published address states that "The attack on the Los Angeles Times and the attitude of the American Bar Association Committee seemed to make it desirable to present my idea of the subject discussed." He started with the premise that "the public now is accustomed to, demands, and receives a higher standard of conduct from its judges than from its other officials," added that "there is nothing sacrosanct about the courts in this country, what goes on in them may be discussed and criticized." "It is neither fair nor lawful," he said, "to comment on a pending case in a fashion to prejudice the rights of a party to the litigation, but the obstruction to justice in a pending case must be actual and demonstrable, not derived from theory or possibility." He refers to the use in England of the process of contempt in restraint of comment on pending criminal cases. He criticized the English judicial system as a "medieval institution," which we should not set up "as the model for our tribunals," asserts that "the press is not now, and never has been free in England, that where parliament has failed to impose a sufficient gag, the courts have found one;" objected that "it is now proposed to change the constitution by importing the English legal fiction that telling what has transpired will interfere with a fair trial and the rights of some accused person," and, he said, "it will be a dark day when, in order to ape the judicial system of England, we hobble any one who, for whatever motive, enlists in the war against crime."

As to the taking of photographs, Colonel McCormick said: "The repetition of what has been seen does not jeopardize any right." He denied that telling what has transpired will interfere with a fair trial and the rights of some accused person. "The

purpose of a reporter in court," he said, "should be to state accurately what transpired," and "photographers need be no more conspicuous than the reporters or the spectators," and as a form of reporting: "Camera reporting can no more be resisted than the reporting of the debates of parliament could be resisted two centuries ago. . . . I venture to say," he said, "that the use of the camera in the court will become as common as the shorthand reporter."

A different picture is presented by Columnist Walter Lippman in an address before his fellow newspaper men assembled in meeting of the American Society of Newspaper Editors on April 18, 1936.⁸ Mr. Lippman made a very refreshing contribution to this subject. He referred to the then recently appointed Baker Committee, thought the American public would "be glad to know that the larger aspects" of the Hauptmann cases are being studied by the American Bar Association, the American Society of Newspaper Editors and other organizations representing the newspaper profession. His address was an appeal for joint action by press and Bar. After rehearsing the events of the Hauptmann trial, much as they had been narrated in the Hauptmann report, but more briefly, he concluded that:

"In respect to the trial in court, it is the right and it is the duty of the judge to keep order in his court and around it. He does not have to admit more spectators than can be seated comfortably or more than a reasonable number of representative newspaper men. He does not have to admit cameras, radio broadcasting machinery, special telephone and telegraph apparatus to the court house. The streets can be cleared of crowds and the traffic can be kept moving. Moreover, he does not have to submit to having the case tried simultaneously in the newspapers. Under any realistic conception of the judicial progress, comment on the evidence by newspapers, speakers on the radio, by the lawyers, is contempt of court. It should be treated as such. This is the English law, developed not by statute but by judicial decision, and no one, I think, will wish to say that the English have any less respect for freedom of speech than we have." It is, therefore, he further said, "upon the officers of the law that we must place the primary responsibility for effective action which will prevent a repetition of these abuses in the future," and "this," he said, "is where we, as professional newspaper men, have our primary responsibility. . . . It is our duty, I believe, to make it plain to the regular officers of the law that we expect them to administer justice in an orderly way, that we shall attack them if they do not, and that we will defend them if they do. Then

⁸See New York Herald Tribune, April 19, 1936, p. 20.

let them choose between the yellow press and the reputable press, and let them find out whose favor counts the more."

SUMMARY

The Hauptmann Report, the Baker Report, the Commentaries to which reference has been made, constitute but a small part of the literature which followed the Hauptmann trial. Comment was widespread and criticism was keen. This comment and criticism have not been without avail. Looking forward, there are in the United States more than 3000 courts which try criminal cases. It is no small matter to co-ordinate trial practices in so many courts and jurisdictions. We can only look for reasonable measure of result. We may not all agree as to detail, but these are some fundamentals on which it seems to me we should agree.

First, we cannot look for much relief from legislation. No more statutes are necessary and more statutes would not help.

Second, contempt proceedings, injunctions, give promise of very imperfect relief.

Third, public opinion is a powerful factor in promoting any forward looking movement. Intelligently formed and rightly directed, nothing can withstand it. The public discussions of the occurrences of the Hauptmann trial did crystallize public opinion, and the effect of the public opinion so crystallized is manifest in some of the enlightening occurrences that have followed. The trouble is that public interest soon wanes and public opinion is, too often, not a sustained force.

Fourth, civic codes of rules have their value. A code of rules such as were incorporated in the Hauptmann report and published by the Executive Committee of the American Bar Association, the code of rules adopted by the joint conference of the American Bar Association, the American Newspaper Publishers' Association, and the American Society of Newspaper Editors, the Canon of Ethics of the American Bar Association, and the State and Local Bar Associations, have some salutary effect. The weakness is that there is no coercive authority back of any such set of rules. However, their adoption is persuasive and contributes to the formation of public opinion.

Fifth: The broad question of trial control involves lawyers, editors, publishers, broadcasters, telegraphers and all distribution of news. Cooperation is important. Experience has demonstrated the difficulty of securing agreement of these groups upon

a common program. If delegates agree, the rank and file may not follow. Negotiations between the various groups are useful but not to be depended on too much.

Sixth: In the last analysis the heavy burden must fall upon the court. The court, with cooperation on the part of the Bar, the editors, the publishers and the broadcasters and the law enforcement authorities, prosecutors and peace officers, can easily control the situation. In fact, the court alone can do so. It has the power and it owes the duty to do everything necessary to secure a fair and orderly trial; its power commands obedience and respect, greater than that accorded any other official body of men.

My own notion is that results similar to those obtained in the few jurisdictions cited here as examples may be generally, if not universally, obtained by similar official and judicial attitude. My experience in dealing with "The Press" has been that the standards of professional honor of newsmen are very high, and that we may with confidence look for their fair cooperation with established authority.

I quite agree with Mr. Lippman as to the power and the responsibility of the courts and as to the responsibility of the Press. If the "reputable press," of which he speaks, will measure up to the standard he has marked out, I have no doubt that the courts will cooperate with the "reputable press."

REPORT OF SPECIAL COMMITTEE ON PUBLICITY IN CRIMINAL TRIALS

TO THE SECTION OF CRIMINAL LAW OF THE AMERICAN BAR
ASSOCIATION:

Your committee, appointed to consider various activities in connection with the trial of Bruno Richard Hauptmann, beg leave to report as follows:

On March 1st, 1932, Charles A. Lindbergh, Jr., a child of 18 months, was kidnapped from the home of his parents in Hunterdon County, New Jersey. Some days later he was found dead and apparently murdered, not far from his home. After the kidnapping and after the murder, but before the murder was discovered, a man, supposedly the kidnapper, extorted a large ransom from the parents on a promise to restore their child.

When the full extent of the crime was discovered there was nation-wide fury. The atrocity of the crime, combining as it did kidnapping, murder and heartless extortion based on false pretense, made the crime in the public estimation one of the foulest of the century, and these things combined with the prominence of the parents all served to arouse the nation as few other crimes have ever done.

For more than two years, in the press, over the radio, on the screen and in private conversation everywhere, the Lindbergh kidnapping held the center of attention, and when, after two years, Bruno Richard Hauptmann was arrested, charged with this succession of crimes, and was conclusively shown to have a large amount of the ransom money in his possession, the attention of the whole country, and in fact the whole civilized world, was drawn to the scene where his trial was to be held. Officials with business there, criminologists with scientific interest, and curiosity-seekers who thought they had a right as citizens to know and to see what was going on, turned toward this scene of action. To satisfy the public's desire for news and thrills, all media of communication and news distribution were called into requisition and focused at this same scene of action. Newspaper reporters, columnists, magazine writers, telegraphers, broadcasters, screen producers flocked there, as did also the general public. People sped there, by rail, by air to a specially improvised airport, by motor speeding over paved highways, in fact by every known mode of travel.

The place was Flemington, New Jersey, a peaceful little city of 2500, which required and possessed a one-man police force, situated in a rural county, with its sheriff and deputies not accustomed to dealing with crime but capable of taking care of the usual court routine of that sort of a community. The place was, of course, part of the area covered by the New Jersey State Police. The county court house was built in about 1700, reconditioned after a fire in 1828, and not much changed since that time. Its stone walls are two feet thick. Its interior is adapted to the ordinary routine legal affairs of a quiet rural county. The courtroom is said to have a maximum seating capacity of 260, but as you look it over you wonder where 260 people could be seated there. A panel of 150 jurors had been summoned, attorneys, attendants and witnesses to the number of perhaps fifty had a right to be there, each of one hundred thirty-five newspaper reporters wanted a place to sit and to write, screen and radio pro-

ducers wanted facilities, provision for telegraph service was demanded, and the general public, in numbers, it is said, as high as 20,000 in one day, wanted entrance to see and to hear. Here was clearly a problem to tax the court, and also to tax the court officers and peace officers unaccustomed to such crowds. As the jurors were selected, all but twelve of the panel faded out of the picture, but the number of witnesses and of others whose direct interest entitled them to admission increased as the trial went on. The sheriff resourcefully provided for the representatives of the press by means of an extension of planks along the court railing and down the side of the room, one plank serving for a seat, another for a desk, with spaces on each carefully marked and numbered. A small balcony in the rear of the courtroom furnished a place where could be installed equipment for reproducing pictures and registering sound, while a small adjacent room, ordinarily unused, had possibilities for installation of telegraphic service. And here, and in this environment, and under these circumstances, the *Hauptmann Case* was tried.

The trial opened January 2, 1935. The verdict of the jury was returned February 14, 1935.

TRIAL JUDGE AND JURY FAIR

The trial was presided over by Judge Thomas W. Trenchard of the supreme court of New Jersey, who was assigned to this duty by the court. It is not our purpose to review or analyze the rulings of the court or the conduct of the trial as they affect questions of law or of fact involved therein. Judicial review has taken care of that. Our criticism will be directed to other matters. We deem it proper to say, however, that in all of the mass of literature on the Hauptmann trial, we have found only words of praise for the able and discriminating judgment with which Judge Trenchard conducted the trial. In his judicial conduct, he was undisturbed by the whirl of excitement roundabout. Every precaution was taken by the court to guard the jury from outside contacts. They were segregated, conducted through the crowds and constantly guarded when off duty. Newspapers and other publications containing comments on the trial were kept from them. There has been no suggestion of any impropriety in connection with the conduct of the jury during the trial. Like the court, they were apparently undisturbed by the excitement about them.

DETECTION AND APPREHENSION COMMENDABLE

We have deemed it not a part of our duty to review the years of work that led to the detection and apprehension of the defendant. We feel it proper to say, however, that the detective work, the quiet but persistent vigilance, search and research, the development of an impressive technique of scientific methods of detection, were surpassingly able and brilliant, and have withal helped much to give a sense of security to all who concern themselves with the problems of crime. One writer has said they "surpassed in brilliancy the greatest achievements of Sherlock Holmes." The effective co-operation of the United States Department of Justice and the local forces of New York and New Jersey was most valuable and praiseworthy.

THE TRIAL

We have, of course, an intense interest in the trial itself, in its general conduct and its proper result, but we are also interested in it because of the light that it throws on the administration of criminal justice, and on tendencies and practices which were accentuated in this trial through its importance and the popular interest in its every detail.

PUBLIC TRIAL — CROWDED COURT ROOM

It will doubtless be conceded that a state criminal trial should be a public trial. English law and American law have always recognized public trial as a right and have assured to a person accused the right to publicity of proceedings. Publicity is a safeguard against oppression and star chamber practices. This does not mean that all of the people who wish to attend have a right to be auditors or spectators at every murder trial. This is essentially impossible. The purposes of publicity do not demand it and the space allotted to the court room does not permit it. Orderly procedure is indispensable and a calm atmosphere is essential. The presence of a crowd of people impelled by morbid curiosity is not the publicity which the ends of justice require. Officials, parties, witnesses, attorneys must be admitted and a fair representation of publicity agencies should have a place. But justice will be the more safely conserved if the attendance of spectators is definitely limited to the comfortable seating capacity of the court room.

During the trial of this case the court was much troubled with crowds of spectators standing and impinging on the aisles and

passageways. He received indifferent co-operation from the court officers, frequently admonished them to keep order instead of "sitting around in the courtroom having no oversight over the audience."

On January 28th the court notified the court officers that "tomorrow morning and from that time forward, until the trial is finished, after the seating capacity of the courtroom is well filled the doors will have to be locked and spectators will have to be denied admission." On January 30th, however, the record shows that there were, as the court said, "too many people standing . . . some were standing against the wall, some were standing on furniture, some sitting on tables or radiators, in order to get a better view."

On January 3rd, the New York Times thus described the situation:

"Inside the court room the press was even greater than it was yesterday. After the dismissal of the jury panel and the arrival of Mrs. Lindbergh, the constables on duty at the door admitted 275 spectators without passes to an already over-crowded courtroom. Although Sheriff John H. Curtiss had ruled that there would be no standees in the trial room, before noon the side aisles were filled. Men and women sat on the window sills and jammed the small space between the bench and the walls."

On January 22nd, the Daily Mirror under the title "COURT JAM" said:

"The Bronx subway was never like the court house here. So many spectators were crowded into the chamber where Hauptmann is on trial that one woman, caught in the milling during the noon recess today, narrowly escaped falling through a side window which broke, fragments of glass showering a dozen other women below in the street."

On January 28th, the Mirror said:

"The fourth broken court room window was registered at 3:01 during a recess, so choked to capacity are the window sills."

After the trial a contributor wrote in *Cosmopolitan*:

"Two vivid impressions of the terribly overcrowded and badly ventilated courtroom at Flemington remain in my mind above all others. First, my firm conviction of Bruno Hauptmann's guilt, and, second, my disgust at the curiosity seekers who jammed the benches and stood along the walls."

Newspaper reporters and columnists wrote from day to day of "famous faces seen in court" as they might have listed the box-holders at a grand opera, and gave long lists, including by name, movie actresses, feature writers, dramatic critics, radio broadcasters, actors, ex-pugilists, politicians, bankers, show promoters,

a "music chap," wives of prominent men, and society matrons in fine furs who acquired the title of the "Mink Brigade." It was a cosmopolitan congregation.

There was probably no thought on the part of these spectators that they were, by their attendance, performing a public duty in the interest of even-handed justice, little thought even of the fact that this was a most grave and serious proceeding.

SPECTATORS FAVORED WITH SUBPOENAS

On January 26th the New York Times revealed the very extraordinary situation of subpoenas issued to would-be spectators to assure them a place in the court room. The article reads:

"Tonight at the close of court Justice Trenchard called lawyers from both sides into his chambers for a conference with Sheriff John H. Curtiss. Among the questions discussed was the practice of attorneys from both sides of issuing subpoenas ostensibly to 'witnesses' who will be called upon to testify, but in reality to friends seeking a seat in the courtroom. Sheriff Curtiss said that more than 100 such subpoenas were issued for today's session."

THE CROWDS OUTSIDE

As early as January 11th the Associated Press reported that 16,000 automobiles and 64,000 visitors had converged into or passed through Flemington. From day to day the newspapers described "half-hysterical crowds that paw and claw and shove and jostle their way" about town and if possible into the court house and court room; one columnist deplored the "circus spirit," the Roman Holiday attitude of the crowd, thronging as they would throng to a bull fight, morbid, curious, in search of sensation and thrills.

In the city outside the court house, every day, thousands jammed the streets, making access to the court house difficult for those entitled to enter.

The New York Times on January 3, 1935, said:

"A crowd of 300 in front of the court house made a concerted rush for the door at the opening of the afternoon session of the Hauptmann trial. Only one trooper was on duty there at the time. He was brushed aside, and one of the glass panels in the front door was shattered. Three other troopers came up on the double quick and drove the crowd back. The guard is now increased," [later] "a special detail of State Police was called to assist the local constabulary and they finally roped off the court

house portico and dispersed the crowd from the steps. It had become so dense around the doors that it was almost impossible to enter or leave." It is not the province of the trial judge to police the streets of the city. There were constituted peace authorities with power enough to regulate the crowds outside the court house, difficult though the problem might be. Proper policing would have demanded that a very liberal area about the building, more than an aisle, be kept free of any crowd, however peaceful and well-intentioned. A murder trial should not furnish a public spectacle either within or without the courtroom.

THE SOUVENIR MANIA

No one would seriously criticize the popular hobby of souvenir-collecting. But just as the justifiable desire to see and to hear things of public interest may deteriorate into a morbid hunt for the sensational, so the desire for souvenirs may deteriorate into a rush for things morbid and repulsive.

At Flemington the morbid souvenir hunter was offensively present. Souvenir hunters picked up chairs and attempted to walk away with them. One started to break the wood of the chair on which Hauptmann sat in the courtroom. One girl wanted to buy the witness chair as a souvenir. Some even carried away sheaves of copy paper of the Western Union and Postal Telegraph Companies. It was said that the sheriff was kept busy signing his autograph to books and pieces of paper until he could not write any more. But most pathetic of all was the marketing, amongst the crowd, of souvenir ladders, a reminder of the ladder which was one of the instruments used in the commission of the foul and deadly crime. These were eagerly bought and freely displayed. One magazine contributor, giving her impression of the Hauptmann trial, used this language:

"What hit hardest at Flemington? Those ghastly souvenir ladders. . . . Once America despised ruthless greed, held life and law sacred, now greed is smart—and life and law are cheap. . . . When a people who once bowed before a cross snicker at a kidnap ladder—look out!"

Summarizing the whole situation the Saturday Evening Post had this to say:

"Among the lows we have reached in the depression is the new one in good taste, good manners and good policy accomplished at Flemington. Our criminal trials are apt to be public circuses, the more sensational the trial the more outrageous the circus. We go

on deploring them as National disgraces, yet we do nothing. 'Why?' Because they sell newspapers."

"A Frenchman on Flemington" in "Living Age" of April, 1935, sums up as follows:

"In France the courtroom at once assumes the aspect of a public meeting or of a bad theatre. Everything is calculated to move the emotions. . . . In England emotion is banished from the proceedings. Everything takes place in an intellectual abstraction, in the analysis of facts. . . . Nothing of the sort can be found in America. The atmosphere is entirely that of a circus or even of a rodeo."

Perhaps his picture is over-drawn. We will not admit the universality of his characterization of American criminal trials but there are many who would agree with this writer.

THE PRESS

It is said that more newspaper space was devoted to the Hauptmann trial than to any other similar event in the history of journalism. For week after week the court house in Flemington rather than the White House in Washington was the news capital of the Nation.

One magazine said: "Seven hundred correspondents have been quartered in this New Jersey village."

Another said: "More correspondents, sob-sisters, sportswriters, psychiatrists, cameramen, etc. etc., have converged on Flemington than represented American papers in France during the World War," and further, that "all the London papers save one have been devoting their main headlines to the goings on in the little eighteenth century courthouse of Hunterdon County, New Jersey—all but the immortal 'Thunderer.'"

Much has been said and written about newspaper methods of handling publicity of the proceedings of sensational criminal trials. For the most part, those of us who talk about the subject have no power to regulate. The pedestrian commentator and the mail bag contributor bring us "camels' loads" of suggestions, most of which are impracticable, and the press goes on according to the judgment and discretion of those who conduct its affairs, sometimes wisely and judiciously, sometimes, in our opinion, not so. Some say the newspapers give the people what they want, but it is doubtful if the people really want exaggerated over-drawn stories. In answer to an editor's statement that "we must have drama," one writer says, "There are more readers than some publishers suspect who do not require drama at all."

The great majority of newspaper publishers are quite human

and decent. Yet, newspaper stories of murder trials often have exceeded the bounds of proper publicity. This has been especially true of the Hauptmann trial. We see no objection to the reproduction of stenographic notes of the testimony, if proper deletions are made and the record is not encumbered with excluded questions and theatrical devices which are all too common in such trials.

As a few examples of the objectionable newspaper publicity in this case, we note the following:

BEFORE THE TRIAL

The New York American said on September 21, 1934, the day after Hauptmann's arrest:

"The steel-like vault of mystery that has enclosed the Lindbergh kidnapping case cracked wide open yesterday with the arrest of an alien identified as the man who received the \$50,000 ransom money."

The New York Journal on September 27, 1934, contained the following headlines:

"CLUES BUILD IRON CLAD CASE AGAINST BRUNO, POLICE CLAIM."

"SUSPECT CRINGES AT HINT OF MEETING WITH LINDY."

Giving the defendant a "break" the same paper said of his then attorney on September 24, 1934:

"Fawcett says he will split case wide open."

As early as September, 1934, the Journal proceeded to call a jury and take its verdict. In the headlines it announced, "BRUNO GUILTY BUT HAD AIDS, VERDICT OF MAN IN STREET," and the story proceeded, "Twelve men and women selected at random by an Evening Journal reporter from the rush hour crowds at Journal Square, Jersey City, acted as Hauptmann's jury of peers today and found him, on the basis of the evidence deduced, guilty of both extortion and complicity in the actual kidnapping."

The "evidence deduced" was, of course, the evidence published in the newspapers.

DURING THE TRIAL

Early in the trial, one paper carried a half page of pictures with these headlines:

"THE FLEMINGTON CIRCUS—THIS WAY TO THE BIG TENT."

"IT'S A SIDESHOW, A JAMBOREE, BETWEEN PERIODS OF ALTERNATELY TRYING TO CONVICT AND TRYING TO FREE BRUNO HAUPTMANN."

"IT'S A HOLIDAY, A FREAK SHOW, FOR THOUSANDS LAUGHINGLY GATHERED TO SEE A MAN FIGHT DESPERATELY FOR HIS LIFE."

On the same day another paper carried a half page picture entitled "THE LAST STRAW," picturing Hauptmann in a slough—"THE EVIDENCE," and showing him clutching a board—"THE ATTIC BOARD."

One carried headlines:

"BRUNO WITNESS BLASTS LINK TO LADDER WOOD."

"MISSING INCH PROVED BOOMERANG TO STATE."

One carried an interview with the wife of a juror in which she was said to have stated that she "thinks Bruno guilty."

One carried headlines:

"HAUPTMANN STORY SHAKEN BY NOTES," and "WILENTZ TRAPS WITNESS IN HER OWN TESTIMONY."

One carried the headline:

"HAUPTMANN SHOWS SIGNS OF CRACKING."

One carried a headline, "BRUNO ALIBI PIERCED."

One carried a headline, "HAUPTMANN'S CASE CRUMBLES."

In the Evening Journal, January 26, 1935, appeared the following:

"Attorney General David T. Wilentz' savage cross-examination of Bruno Richard Hauptmann was the most gripping of American courtroom scenes,' Adela Rogers St. John, noted writer, told a nation-wide radio audience. Speaking from the Evening Journal's City room here over WNEW and the twenty-seven associated stations of the American Broadcasting System, Miss St. John praised Wilentz for his handling of the case. Bill Corum, the Evening Journal's brilliant sports columnist, was impressed with Hauptmann's stolidity on the witness stand under the direct examination of Edward J. Reilly, chief defense counsel but he pointed out that under Wilentz's questioning the prisoner was put on the defensive."

The New York Post of Tuesday, January 29, 1935, published this arraignment of Hauptmann:

"'Bruno's cross-examination clinches case,' says Reeve, 'Hauptmann seems to me, on the stand, a thing lacking human characteristics, his face blotched, his mouth sagged, his eyes avoided all the other eyes that stared at him. He made senseless denials. He laughed pointlessly. I found myself thinking the creature must be insane, and then I began wondering if this too were not a carefully calculated pose, if, when a moment came when there was no answer, not even a senseless answer, which might stay the remorseless procession of Wilentz logic, Hauptmann would not leap up and scream and rave, posing as an out and out madman.'"

On January 26th, a columnist wrote in the *Mirror* :

"A man who talks without tone, who sees without eyes, who whimpers without tears and who prays without hope, was Bruno Richard Hauptmann on the witness stand here today, as he told a story which he himself scarce seemed to believe will save him from the electric chair."

On January 28th another columnist wrote :

"Mark down this prediction. The name of Isidor Fisch named by Bruno Hauptmann as the owner of the Lindbergh ransom money found in the Hauptmann garage will positively be cleared before the noon session ends today in Justice Trenchard's court. The *Mirror's* reporter was so assured by one of the highest state officials who said: 'Fisch will be eliminated as the possible writer of the ransom notes and therefore from having any connection with the crime.' To his closest friends, Prosecutor Wilentz has stated: 'Fisch will not only be cleared of the accusation but it is likely that Hauptmann will admit it. The facts are impregnable and even the slightest defendant's stubbornness will melt under the barrage of truth.'"

The *New York Law Journal*, which to laymen appears to be an official organ because it is the paper in which, by order of court is published the calendar of the courts of record of the first judicial department together with every notice and advertisement in legal proceedings which may be required by law to be published, on January 7, 1935, undertook to comment on the case as follows :

"Colonel Lindbergh did not testify that it was merely his 'opinion' that the 'Hey, doctor' voice was the voice of Hauptmann, whom he heard speaking after an interval of more than two years, though such a conclusion could be, at best, only an expression of opinion. Colonel Lindbergh's testimony as to identity of voice was unqualified and it is believed that in the opinion of some members of some juries, the surrounding circumstances and other facts in evidence would not justify so positive a statement."

One newspaper announced in headline and story that Hauptmann had said that one lady juror had smiled on him, and it carried a picture of the juror, who, it might be inferred, was sympathetic toward the defendant.

DISAPPROVAL OF ARGUMENT OF CASE OUT OF COURT

Your committee disapproves of this sort of newspaper publicity. In the first place, we cannot approve of the public argument of a criminal case by a newspaper either in pictures or words published during the trial. These stories, pictures and headlines are, it is true, sensational presentations used for the purpose of

arousing the readers' interest. But in most of them the writer is arguing, from the evidence, from supposed facts, to the public as judge and jury. We must not have two trials, one in court and one outside.

In this case the defendant received a share of favorable headlines, but that is not the point. The system of the public press arguing the case outside of the court during the trial is fundamentally wrong.

It has been said that the lurid headlines and argumentative comments indulged in this case were no worse than the spectacular publicity incident to other sensational State trials, such, for example, as the Mooney trial, the Thaw trial, the Loeb-Leopold trial and the Remus trial and many others. If so, this is but an added reason why we should take cognizance of the situation that existed in this case.

THE ENGLISH PRACTICE—AMERICAN CASES

Publications of the sort above quoted would not be permitted in the English courts. Although without any statute giving them the power to do so, the English courts have, in the exercise of their inherent power to control judicial proceedings and to assure a fair trial, punished as contempt of court the publication of argumentative comment during the pendency of a criminal prosecution.

In the case of *In Re Stead, Reg. v. Balfour*,⁹ Mr. Justice Wells gave reasons as follows:

"The principle to be applied in a case like the present was clear. It is not because the comments might damage the accused person that the court would interfere, but on a *broad and higher ground*—namely, that it was the province of the tribunal before whom the case was tried to determine as to his guilt or innocence."

In that case an editor was held for contempt of court for publication of an article characterizing a defendant awaiting trial as "another naive rogue" who was "a good deal before the courts last month" and predicting that "he will re-appear at Old Bailey, and then we may expect to hear no more of him for some time to come."

The same principle was applied to *Reg. v. Tibbits*,¹⁰ where the court in pronouncing punishment for contempt said, "It is sufficient to say that the publications were far beyond any fair and

⁹(1895) 11 T. L. R. 492.

¹⁰[1902] 1 K. B. 77, 66 J. P. 5, 71 L. J. K. B. 4.

bona fide report of the proceedings before the magistrate."

In the well-known *Crippen Case* the editor of the Daily Chronicle was held for contempt for the publication of an article, while the prisoner was in custody but before the trial. The headlines were "WAS MRS. CRIPPEN POISONED? MYSTERIOUS PURCHASE OF SUBTLE DRUG BEFORE THE TRAGEDY. SENSATIONAL DISCOVERY." Then followed in smaller type, "A sensational discovery of the purchase of deadly poison some time before the tragic death of Mrs. Crippen was reported to us late last night. The police are investigating the purchase and the identity of the purchaser. Meanwhile Crippen, acting presumably on the advice of counsel, has become more taciturn," followed by an article no more specific in its language. *In re Crippen*.¹¹

The same power of the courts is recognized in the American cases but it is not much enforced in practice. An illustrative case is *In re Independent Pub. Co.*,¹² where a publisher was held in contempt. The headlines were:

• "‘SLICK’ MR. POE IS NOW ON TRIAL.

"FORMER AUDITOR OF NORTH DAKOTA CITY, EX-CONVICT,

"CHARGED WITH FRAUD."

Then follows an article disclosing unfavorable incidents in the past life of the defendant which tended to identify him as a habitual criminal.

SHOULD BE NO DRAMATIZATION OF CRIME

In the *second place*, there is grave danger in the dramatization of crime, and the exploitation of the criminal. One magazine, in writing of the *Hauptmann Case*, said:

"There is widespread feeling that the blame for whipping up public passion lies with the press, that the remedy for such outbursts of mass emotion is to be found in a lessening of the amount of space devoted to reporting such events or in subduing the emotional tone in which such a trial is widely reported."

One of the recommendations of the National Crime Conference was the elimination of the practice of unduly dramatizing crime and glorifying the criminal. The report said, "The social hazard of the practice with its accompanying garish publicity has been a matter of concern for years. . . . It has developed a weak sentimentalism, a distorted and misplaced sense of the heroic, which is extremely difficult for prosecuting authorities to combat.

¹¹(1910) 103 L. T. 636, 27 T. L. R. 32.

¹²(C.C.A. 9th Cir. 1917) 240 Fed. 849, 153 C. C. A. 535, L. R. A. 1917E 703, Ann. Cas. 1917C 1084.

The publicizing of the crime too often carries with it a glorification of the criminal." Crime, as all criminologists know, is often imitative. A condemned murderer, however atrocious his offense, automatically becomes an object of maudlin sympathy, and the exploitation of Hauptmann, who for months was the most talked of man in the world, may have tragic effects upon the impressionable.

THE TELEGRAPH

In the distribution of news, the telegraph is always important. It is a medium between the news-gathering reporter and the editor's room. We do not disparage the demand for rapid dispatch of news. But the process must be carried on in an orderly manner. In the *Hauptmann Case*, fully equipped telegraph facilities were installed in the court house and in a room adjacent to the *small balcony* of the court room. One press report said that 180 wires were installed, another report fixed the number at 40.

One account said:

"Western Union formerly handled its business in Flemington through the railroad station agent and one messenger boy. Today it has two offices and perhaps a hundred men in town, besides messenger boys. There are forty-five direct wires, including a direct cable to London. One of the direct wires goes to Halifax to serve the Canadian press. Dispatches were being filed to Australia and Buenos Aires. During the day dispatches are sent mainly from a wire room on the upper floor of the courthouse."

Another stated: "The Western Union has found it necessary, for the first time in history, to install a special teletype printer-machine connected directly with London."

One writer, describing the situation in more detail, said:

"The winding stairs carried their share of loiterers unable to get into the court room and as one newspaper stated, 'To expedite the movement of news copy under these difficulties, wire chiefs arranged a traffic system and posted a director directly outside of the courtroom door. As scribbled notes were handed out he looked at the top of the paper, called the destination and gave the papers to messengers. 'Paris,' he would cry, and the messenger would go in one direction. 'London' and another would dash up the stairs. 'Berlin' and a third would go flying to another anteroom. Today's volume far exceeded the 1,000,000 words sent out yesterday.'"

These are just some of the things that converted the small court house and its environment into a great news-distributing agency. This, we think, is not conducive to the maintenance of

the calm and undisturbed atmosphere which is so essential in the trial of a criminal case. We believe that neither the court room nor adjacent space should be loaned as a headquarters for news distribution. The removal of the instruments to private premises would have entailed a difference in speed of distribution measured only by minutes.

CAMERAS—FLASHLIGHTS

Picture takers of all types invaded Flemington and pressed into the court house and the court room. The presiding judge forbade all picture-taking during sessions of the court. Pictures taken during court sessions, were, however, procured in some manner and published.

One newspaper carried a picture entitled "Peek-a-boo in the jury box." It showed a juror in the jury box with a handkerchief over his face. The legend was, "Here is Hauptmann Juror No. 11. Every time he sees a new photographer's camera lens pointed his way he ducks, averts or covers his face. This picture was made at the trial today."

On January 4, 1935, one New York daily produced photographs of "Mrs. Lindbergh testifying" and of "Colonel Charles A. Lindbergh on the stand," showing them while they were in the witness chair, and it carried also photographs of two other witnesses, of Betty Gow and Mrs. Ollie Wheatley as they sat in the court room.

Another daily on January 5, 1935, showed a picture of the court room, apparently during a recess, with the jurors in their seats, no witness on the stand, and with Mr. Reilly, Mr. Pope and Mr. Wilentz standing, their places indicated by numbers.

The Nation under date of January 23, 1935, said:

"The coverage of the trial in pictures is a story in itself. Judge Trenchard at first refused to have pictures taken in his courtroom. But 700 newspapermen can't be wrong, and there are now four cameramen stationed in court who are allowed to take pictures when the judge is off the bench. . . . Each newspaper or press service in the pool gets a full set of all successful pictures. These are put in envelopes and addressed and the race for the home office begins. Record-breaking motor cyclists stand ready, in the one-time bake shop to make a dash for the train, the airport, or the city room. One of them made the trip to New York in fifty-five minutes last week. One of them delivered his set of pictures ahead of an airplane which had started at the same time."

Our own opinion is that a courtroom is not a proper place for clicking cameras or photography at any time and that such practices should be strictly forbidden.

MOTION PICTURES AND RADIO

The motion picture has become a useful and enjoyable element in community life. But we must criticize the producers' excesses, of which there were many in connection with the Hauptmann trial. We criticize, for example, the fact that the leading counsel for the defendant was permitted to appear on the sound screen shortly after the verdict and to characterize the result of the trial as "Mob Justice." In our judgment the sentiment should never have been uttered by a defendant's lawyer, and no screen producer and no theatre should have given it distribution.

In the balcony of the courtroom was installed equipment for recording in picture and sound all the scenes and occurrences at the trial. With this was connected wires or cables and instruments on the side wall of the court room. These instruments were plainly visible but not over-conspicuous and probably not offensive in themselves. The producers were under injunction of the court not to operate the contrivance during any session of the court. They violated the court's injunction and proceeded to record in sound and picture all that occurred during the course of the trial. So noiselessly was this done that the court did not discover that the operation was going on. A showing of the reproduction in a New York theatre first revealed the fact that the motion pictures had been taken, and the court promptly ordered that the mechanism be dismantled. The deception practiced on the court was indefensible, and was, in our opinion, contempt of court.

The question whether reproduction in sound of the events of a murder trial should be permitted is debatable. In fact, we do find, among lawyers, differences of opinion. Your committee addressed the two following questions to a number of officers and committeemen of the American Bar Association:

1. Would you consider reproduction in sound of proceedings in court in a murder trial objectionable, if accomplished without any disturbance and without coming to the notice of persons present in the court room?

2. Would you consider such reproduction more objectionable than the reproduction of stenographic record of proceedings in newspapers?

Forty-five responded; thirty-six regarded such reproduction objectionable and the same thirty-six considered such reproduction more objectionable than the reproduction of the stenographic record of proceedings in newspapers. Nine regarded such reproduction in sound as unobjectionable and no more objectionable than the stenographic record in the press. The negative votes are enough in number to lend some authority to their opinion.

One answer said:

"Ten years ago I would have answered these questions in the affirmative. I realize, however, that conditions change. These changes are bound to come sooner or later and instead of endeavoring to prevent them, the Bar might better do what it can to influence their use in a proper manner."

Curiously enough, those arguing from the same premise did not always arrive at the same conclusion. One said, broadcasting will intensify the mistaken impression the public now has of court proceedings. Another said, it conduces to accuracy, gives the public better understanding of court proceedings and so increases respect for the law. One called attention to the fact that we have recently been shown reproductions in sound of proceedings in traffic courts and that these have been received with interest and approval.

We do not agree with those who discountenance a fair published account of the events of a murder trial. We do not raise objection to the publication in the press of properly edited reports of testimony taken. We do not say that reproduction in sound may not be furnished for use on an appeal. But we do not approve of public broadcasting in sound of proceedings in court in a murder trial, and we believe such reproduction more objectionable than the reproduction of a stenographic record of proceedings in the press, for the following reasons:

1. Recording in sound reproduces everything. There is no opportunity to delete offensive matter.

2. It reproduces arguments of counsel, offers of evidence rejected and other irrelevant matter which may easily serve to distract and sometimes to create prejudice.

3. Such a practice dramatizes court proceedings. The trial of a criminal case is a serious and solemn matter. It is stern business. The court room is not a stage. Public broadcasting of its proceedings makes a public spectacle of a criminal trial. It savors of an appeal to the public, to the disparagement of the

orderly processes of the law. It encourages counsel, so disposed, to play for popular applause. It makes the jury, witnesses, lawyers, even the judge, continuously self-conscious with the thought that outside eyes and ears are focused on them and they are performing before this far-flung audience of the populace.

4. It brings the revolting details of a murder trial, its crime story and its sensational matter to children of all ages, who would not be admitted as auditors into any court room while such a trial is in progress but who may at any time be "listening in" on the radio. These objections, in our opinion, outweigh any advantage that may be derived from giving information to the public.

The California State Bar Association recently went on record against the broadcasting of court trials. Following this action, the San Francisco Chronicle, with delectable humor, said:

"At present, State Bar is right . . . but only because the radio would transmit what was said in the courts . . . supposing . . . that court proceedings were conducted with dignity and seriousness—no clowning, no bickering, no circusing. If this fine, orderly, solemn procedure were available to any interested citizen who wished to dial in, wouldn't it tend to increase the knowledge of the working of law and justice and give a greater respect for the courts? . . . Don't blame the radio, rather bring the courts up to at least the standard of Amos an' Andy, or Cecil and Sally."

The editorial does not stand analysis. It is no part of the purpose of this report to answer the charges of "clowning," "bickering" and "circusing," but we emphasize that the editorial entirely overlooks the sombre fact already referred to, that a criminal trial is of necessity a story of crime, that a murder trial is of necessity a repulsive story of murder, and that even if the trial is conducted with perfect seemliness the story is not one to be given to the millions of children who may tune in on the radio at will.

VAUDEVILLE OFFERS

The press on February 16th announced that members of the Hauptmann jury received an offer from a New York Agency for a twelve weeks vaudeville engagement, at \$500.00 a week for the foreman and \$300.00 a week for each other member of the jury. From press reports it seemed that this proposal was seriously considered by some of the jurors. Fortunately, wiser counsel prevailed and we were spared the shame of any such commercialization of the processes of justice.

JURORS' "INTERVIEWS"

The jury carried on creditably during the trial. All through the trial, these twelve, artisans, men of modest business and housewives, showed a desire to pass judgment on the basis of the testimony rather than on emotional factors which often enter into the consideration of a sensational case. We cast no doubt upon their verdict.

After the trial was over, however, each one of the jurors was solicited to give and did give an interview with comments on the testimony and the deliberations of the jury. These interviews were syndicated and published in newspapers over the country. For them, the jurors received pay. We quote a letter from one of the jurors answering our inquiry as follows:

"Answering your letter of the 26th inst.,

"I presume you refer to an article by me entitled, Colonel Lindbergh; there are twelve of these articles, one by each juror, covering a different subject as it appeared to us during the trial. For our time and thought in preparation of these different articles we will get less than fifty dollars apiece, unless they should be published in book form. Other printed matter bearing my name, or the name of any of the other jurors, were gratis. I do not believe that any juror has received any money beside that paid for the series of articles mentioned, which, of course, took our time and talent and could not be well furnished gratis. Trusting this is the information you are concerned about, I remain,"

We do not wish to be harsh with the jurors. The interviews mentioned were modestly written. But we submit that the practice of jurors "cashing in" on the fame that comes to them by reason of their jury service is clearly objectionable and should not be allowed. If a judge should, for pay, give out an interview commenting on a criminal case tried before him, there would be a storm of denunciation. It is just as bad for a juror to do so. The reasons are obvious. It is commercialization of the administration of justice. If jurors understand that reward is in prospect, that fact may easily influence their verdict toward the side which seems to have the greater promise of reward.

THE DR. CONDON MAGAZINE ARTICLES

Commencing with January 25, 1936, a series of articles appeared in *Liberty* by Dr. John F. Condon, who was a witness at the trial in Flemington. The articles are partly a narrative of the events which had been detailed by Dr. Condon as a witness at

the trial, but they were also in large part comments, deductions and argument.

The first article, of January 24th, starts with the headline: "JAFSIE TELLS MORE SECRETS OF THE LINDBERGH CASE." In this article the writer tells of his telephone conversation with "John," the writer of the notes, and says that he heard John announce to some third person "the gist of my reply," and states that he "realized with a sudden shock that the kidnapper was talking to a companion." The article closes with the editor's comment containing several questions and the statement, "For the answers to these vital questions, read Jafsie in Liberty next week—always bearing in mind that amazing NEW EVIDENCE awaits you in a later installment."

The article of February 1st carries the headline, "A CHAPTER OF NEW REVEALING LIGHT ON THE LINDBERGH CASE," and after again discussing the telephone conversation, concludes, "That is why I am still convinced that more than one person is involved in this crime." This article ends with the editor's assurance that "most sensational NEW EVIDENCE will be presented in a later installment."

The article of February 8th closes with the editor's promise that a "heart-gripping moment" will be for the first time pictured truthfully in next week's installment, that "a mysterious woman will make her entrance into the case," and that all this leads up to the NEW EVIDENCE that will be forthcoming in a later installment.

The article of February 15th carries as a headline, "THE MYSTERY OF THE ITALIAN WOMAN—MORE NEW LIGHT ON THE LINDBERGH CASE," introduces the mysterious character who accosted the Doctor in a Bazaar and made an appointment to meet him at the depot at Tuckahoe, Wednesday at 5 P. M., and closes with similar promises of NEW EVIDENCE in a later installment.

The article of February 22nd in headline gives a place to "the mysterious emissary" and presages "more new revealing light on the Lindbergh case." The article tells how the mysterious woman failed to keep her appointment, argues that although she did not employ the word "Lindbergh," "kidnaping," "baby" or "John" and used no word referable to the case, "it seems logical to believe that her words to me were in connection with the case," and surmises, "one possibility—and the most likely one in my

opinion—is that she was a direct agent of the kidnaper, sent to reassure me.” The article ends with the editor’s assurance that the next installment “will be an eye opener—and new evidence is in store for you in a later one.”

The article of February 29th casts doubt on the Doctor’s previously expressed theory as to accomplices, and states, “This man has represented himself to be a go-between for the Lindbergh kidnap gang. I know now that he lied. Perhaps he had accomplices, perhaps there was a gang. But he was no subservient go-between. He was the leader. For without hesitation he had agreed to accept a reduction of twenty thousand dollars in the amount of ransom demanded.” At the conclusion of this article the editor promises more “NEW EVIDENCE.”

Dr. Condon no doubt performed a useful service in securing contact with the kidnaper, but in our opinion the publication of these articles at the time they were published by one who was a witness in the case was decidedly out of place. It must be remembered that the Hauptmann case was still pending. The sentence had not been executed. The air was charged with discussion of the subjects of a new trial, pardon, commutation and reprieve. In fact, the Condon articles were much used in this discussion. Publication of any material bearing on the testimony, the issues or the theories of the case, at this time and under these circumstances, by one who had been a witness upon the trial can serve no useful purpose, and no purpose at all except personal publicity or gain.

One of the witnesses who testified as a wood expert manifested a much better sense of propriety when he declined to discuss this phase of the expert testimony in a public meeting until such time as the Hauptmann case should be settled.

THE PUBLICITY CAMPAIGN

Before the trial commenced and during the trial there was organized publicity on behalf of both prosecution and defense and this publicity campaign was carried on by the defense counsel even after the verdict was returned.

On Thursday, January 3, 1935, the Daily Mirror, under the headline “LINDY CASE LAWYERS’ VIEWS,” carried parallel statements of what the prosecution and defense proposed to prove. The state was credited as saying, “We have an iron clad case against Hauptmann. We will prove that he murdered the helpless infant.” The defense, that “Hauptmann is an innocent victim of

circumstances. We are going to start the new year with justice." It is only fair to state that the attorneys deny issuing these statements.

THE DEFENSE COUNSEL

Mr. Reilly gave out frequent published statements. He offers no apologies for so doing but says: "Publicity in cases of this kind is essential, especially in view of the vast amount of publicity which issued from the prosecutor's office from the moment this defendant was arrested."

Two days after his appointment, news reels spread before the public pictures of the chief defense attorney in action. He told the American people that a man must be considered innocent until proven guilty, that a mere accusation is not proof of guilt, and that his brief examination of the case had convinced him of the innocence of his client. A new flood of newspaper interviews was shortly thereafter loosed upon the world.

On January 8th the chief defense counsel announced in the press his plan of defense in three parts, namely: Alibi-handwriting, expert testimony, and evidence implicating witnesses for the State.

On January 6th, 1935, the Daily Mirror gave this interview:

"Edward J. Reilly, chief of Bruno Hauptmann's defense counsel, asserted yesterday that he knows and will name the actual kidnapers of Charles A. Lindbergh, Jr., this week. 'On Thursday morning in open court,' said Mr. Reilly during an interview in his Brooklyn office yesterday, 'I will name the four people whom we will charge with the kidnapping and murder of the Lindbergh baby. . . .' Reilly refused to reveal who the four killers are except to state definitely that they were connected with the Lindbergh household in Hopewell. 'What about the ladder?' a reporter asked. 'That ladder is nothing but plant,' Reilly replied banging a hand on his desk, 'You know, a part of the scenery.'

On January 7th the New York American said:

"In an exclusive interview here with a New York American reporter, Reilly refused to name the four persons, holding that he must save their identity until Thursday as a trump card in cross-examination. But he revealed that he intends to tie up former servants in the Lindbergh household with Isidor Fisch and hopes to prove that their acquaintance with Dr. J. F. Condon predated the kidnapping of the child."

On January 21st the Daily Mirror carried a headline:

"REILLY HAS THREE SURPRISES," and the article said that, "Defense counsel Reilly in his Brooklyn office yesterday stated that he will spring a few surprises when Hauptmann's

side of the case is being put before the jury. He expects to call about 50 defense witnesses. Mr. Reilly said he will put on the stand three responsible persons, who will testify that Isidor Fisch had asked him before he left on his trip to Germany, where he died, to take care of the shoe box which Hauptmann says Fisch left with him and in which \$14,600.00 of the ransom money was found."

On February 2nd Mr. Reilly promised "bomb shells" for the trial the next week.

After the verdict and on February 27th the chief defense counsel, in an address before the Lions' Club of Brooklyn, charged the verdict to "hero worship," and about that time, in an address to which reference has already been made, characterized the verdict as "mob justice."

On February 28th the New York Times carried a story that Mr. Reilly, with others, addressed a mass meeting at Yorkville Casino in New York City on behalf of the "Hauptmann defense fund." It was stated that "the crowd booed the name of Colonel Lindbergh and Attorney General David T. Wilentz." The Times stated that the booing of Colonel Lindbergh and Attorney General Wilentz came during an address by Mr. Reilly. Mr. Reilly denies this and says it transpired from remarks made by a man representing another of Hauptmann's attorneys. The crowd was probably made up of persons of ordinary human impulses and sympathies. Their conduct in jeering the name of a father, whose only offense was bereavement, can only be explained on the assumption that they were carried away by the appeal made to them by some one, and, on impulse, manifested a lack of human sympathy of which in more sober moments they would doubtless be ashamed.

On January 11, 1935, International News Service published the following:

"The defense of Bruno Richard Hauptmann, on trial for the murder of Charles Augustus Lindbergh, Jr., is costing 'more than \$50,000,' Edward J. Reilly, chief of defense counsel, told International News Service today in an exclusive interview. Hauptmann is paying only a paltry \$2,900.00 of this cost, Reilly said, and the rest of the expense is carried by the four attorneys who are trying to save the German from the electric chair. 'We have received only \$2,900.00 from Hauptmann—on a mortgage he held,' the portly, red-faced Reilly boomed, 'And that was paid out in less than three weeks for investigations. He hasn't any more money that isn't tied up by the government. The rest of the expenses are coming out of the pockets of his lawyers.'"

If this statement was true, the conduct of the attorneys was censurable. The practice of financing the expenses of the defense by the defendant's attorneys is reprehensible and contrary to all recognized canons of professional ethics. Canon 42 of the American Bar Association reads: "A lawyer may not properly agree with a client that the lawyer shall pay or bear the expenses of litigation; he may in good faith advance expenses as a matter of convenience, but subject to reimbursement."

It may be noted, however, that the statements made in the above "exclusive interview," do not square with the claims made in the complaint in the action later commenced by Mr. Reilly against Mrs. Hauptmann. The action was to recover \$22,398.00. The complaint listed Mr. Reilly's fees at \$25,000.00 and added \$4,761.00 for disbursements. It alleged that \$7,362.00 had been paid, leaving a balance of \$22,398.00.

In the issue of *Liberty* of October 5, 1935, appeared an article entitled, "WILL LINDBERGH SAVE HAUPTMANN?" by Edward J. Reilly. Stripped of all rhetoric, the article was an argument to the public that the guilt of Hauptmann was not proven. The case was at that time pending on appeal in the New Jersey court of errors and appeals and the question of the proof of Hauptmann's guilt was in issue on the appeal. Mr. Reilly had retired from the case but that fact does not change the situation much. In our opinion it is grossly improper for an attorney, whether still in the case or not, or whether he had ever been in the case or not, to go before the public before the conclusion of the case with an argument on the merits of the case. It is our opinion also that no magazine should be permitted to publish such an argument at such a time.

BULLETINS ISSUED BY DEFENDANT

During the course of the trial we were presented with the unprecedented spectacle of a defendant on trial for murder, himself, issuing bulletins to the public during the course of the trial.

On January 21, 1935, the *Post* carried this bulletin:

"The following statement by Bruno Richard Hauptmann was made public today by C. Lloyd Fisher, defendant's counsel: 'I am anxious to take the stand. I have listened to a lot of lies in that court room. Now I would like to do my own talking and tell what is really the truth.'"

On January 29, 1935, the *Evening Journal* carried this bulletin:

"Through defense counsel, Hauptmann's statement was given. Among other things, he said, 'I am not afraid. They have nothing on me. Because the attorney general shouts that does not mean he proves anything. I am not scared of him. I am telling the truth.' 'Are you worried about what Wilentz will spring on Monday?', Hauptmann was asked. Hauptmann shook his head. 'No, I am not worried about anything.' His voice was shrill."

THE STATE'S ATTORNEYS

The state's attorneys also indulged in newspaper publicity. Their preparation and presentation of the case was exceptionally able. We regret the necessity for criticism. The state's attorneys refrained at all times from broadcasting, and since the trial have refrained from public discussion of the case. During the trial regular daily conferences with the press were held, as the attorney-general said, in the interest of accurate information, and the newspapers published comments and forecasts purporting to emanate from the state's attorneys which were allowed to stand uncontradicted.

The New York Times on January 4, 1935, said:

"At a press conference this afternoon at Trenton, Attorney General Wilentz said, 'Mrs. Lindbergh's testimony is loaded with importance and contains something very vital to our case.' He explained that he was referring to the introduction of the Lindbergh baby's sleeping garments."

The World-Telegram on January 22, 1935, said:

"Attorney General David T. Wilentz left the court room exultantly at noon today to walk through the snow for lunch at the Methodist Episcopal Church. 'We are going to wrap the kidnap ladder right around Hauptmann's neck,' he said. 'I mean it; that is exactly what we are going to do, and tomorrow night, we will see our case wound up tightly.'"

AMERICAN BAR ASSOCIATION RULES

The American Bar Association has characterized publications on the part of lawyers. Arguing a case publicly by lawyers is condemned in its Canon of Ethics No. 20, as follows:

"Newspaper Discussion of Pending Litigation. Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An ex parte reference to facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any ex parte statement."

LUNCH BOX JURIES—GAMBLES ON THE VERDICT

With the persistent efforts of counsel to present and argue the case to the public, it is not strange that the public should have responded. The press, one day during the course of the trial, carried an article headlined "LUNCH BOX OPINION." The article stated that "In several cities in the Midwest, ballots are being taken on the guilt or innocence of Bruno Richard Hauptmann." An accompanying picture showed the ballot box, a placard labeled "Lunch box jury—vote here" and carried a picture of Hauptmann, and a picture showing two young women "as they cast their ballots in Centreville, Iowa."

Nor is it strange that with all the harangue by lawyers to the public and all the publicized arguments from other sources, the sporting fraternity should gamble on the outcome of this murder trial as they would on any publicized sport, and it is not surprising that we should find articles like this as it appeared on January 31st: "ODDS NOW FOUR TO ONE. Bruno's story narrows bets on his conviction. The betting odds on Hauptmann's fate are now four to one for conviction. When he took the stand on Friday they stood six to one, but his own testimony reduced them;" or this, as the situation was analyzed on February 10th: "BET BRUNO GETS CHAIR—Verdict Odds Revealed by Winchell. From Row 'A' Seat 5, Flemington Court House; the sidewalk gamblers, as they are amusingly known, who merely talked money, are agreed that the following odds are correct on the outcome of the Hauptmann trial. The betting pools are to be found in the foyers of the leading Trenton and Flemington hostelrys. The 'nothing ventured nothing gained' brigade will quote you these odds:

1. Even money Bruno gets the chair.
2. Two and a half to one the jury disagrees.
3. Two and a half to one he gets 'life.'
4. Five to one for conviction but not the extreme penalty.
5. Three to two that the jury does not deliberate longer than three hours."

GOVERNOR HOFFMAN'S PUBLICITY

On December 5, 1935, and while the case was still pending before the Supreme Court of the United States, a new burst of publicity issued forth. On that day the New York Journal published the following:

"Governor Hoffman has been conducting a private investiga-

tion of the Bruno Richard Hauptmann case, it was learned today, and the facts which have been uncovered may inject new sensations into America's most famous crime. The Evening Journal has learned from an unimpeachable source close to the governor that these new facts may save Hauptmann from the electric chair, or at least delay his execution indefinitely. Unconvinced of Hauptmann's complete guilt of the kidnapping and murder of the Lindbergh baby, the governor, soon after the Bronx carpenter's conviction, ordered his own private investigation to be made, one of the nation's most famous detectives, a resident of this state [New Jersey], heads the investigation started last April. 'Just what the governor's private investigation turned up I don't know,' the high official told The Evening Journal, 'But one thing is certain, Hauptmann is a long way from the electric chair; no matter what the United States Supreme Court decides on his petition, Hauptmann may never die in the electric chair. Ever since Hauptmann's conviction, the governor was anxious to sift the wheat from the chaff in the trial at Flemington. Many of us, along with the governor, thought the case could stand some private investigation. Governor Hoffman took the initiative and ordered the best detectives in the country to take charge privately.' Although the detective's name was not revealed, the Evening Journal learned that Ellis Parker, ace investigator for Burlington County, has been a regular and frequent visitor to the governor's office at the Capitol here [Trenton]. On these occasions the two have been closeted alone for several hours."

Referring to "rail 16" of the ladder, traced by the state's wood expert to Hauptmann's attic, the Journal on December 8, 1935, said:

"Investigators for Governor Hoffman expressed to him their conviction that rail 16 was framed, and told the governor, the board was, in their opinion, removed from Hauptmann's house by the police so that 'the wood evidence would tie up Hauptmann tight as hell.'"

Anything emanating from Governor Hoffman was significant because, as governor, he is a member of the New Jersey court of pardons. That court consists of eight members, namely, the governor, the chancellor, and six lay judges of the court of errors and appeals. The press reported that the governor said he had visited Hauptmann one night early in October, and it quoted his "press aide" as saying that "the governor has suggested and urged that all members of the court of pardons visit Hauptmann at the prison and learn his side of the case first-hand."

A court of pardons is a quasi judicial body. In practice, such bodies, whether called courts or boards, may receive the information on which they act more informally than do courts of justice,

but their deliberations, involving as they do matters of life, liberty and public safety, should proceed on the same high plane as judicial proceedings. The members, eight in this case, constitute a single body and should act only as a body. The spectacle of a member of a court or board of pardons going about searching for evidence which may impugn the verdict, calling upon prospective applicants in their cells, indulging in public discussion of the merits of the case established in court, voicing doubts as to the prisoner's guilt, arguing out alleged weaknesses in the state's case, all in advance of any action by the court of pardons of which he is a member, in fact, in advance of any application for pardon, and even in advance of the termination of the criminal proceeding in court, is repugnant to our sense of propriety and is in our opinion unwarranted. The net result seems to have been a large amount of publicity and much added annoyance to the estimable family bereaved.

On December 9, 1935, the United States Supreme Court denied Hauptmann's petition for a review of the case. Thereupon a plea for clemency was made by Hauptmann to the New Jersey court of pardons, and on January 11, 1936, the court of pardons rejected Hauptmann's plea. On January 16th Governor Hoffman granted to Hauptmann a thirty-day reprieve. On January 24th Governor Hoffman addressed a public letter to the Editor of the Asbury Park Evening Press, giving reasons for the granting of the reprieve. These reasons were summarized by the Editor of the Press as follows:

"1. 'It does not seem reasonable to expect that, after ruling a man legally guilty, the same judges (five members of the court of pardons) can logically view the case from the angles of mercy and justice.'

2. 'It is my hope that . . . defense counsel and others interested in a full solution of this case will be able to secure evidence of sufficient value for consideration in an unprejudiced and unbiased manner.'

3. 'I will not be satisfied until I have determined whether prejudice and bias might have been contributing factors in reaching the verdict at Flemington.'

4. 'It must be determined whether a contributing factor (in Hauptmann's conviction) was national clamor for the conviction of someone for the murder . . . regardless of whether the evidence proved guilt beyond a reasonable doubt.'

5. 'I want to know whether a public demand that law enforcement agencies "make good" might in any way have caused evidence to be framed.'

6. 'I want to clear in my mind whether politics had any part . . . in the case . . . in view of the fact the condemned man was taken into custody during a political campaign; rushed to New Jersey while that campaign was being conducted; with the result that persons prominent in political life were active in the case.'"

The aspersion cast by the governor upon a majority of his associates upon the Court of Pardons was, to say the least, in bad taste, and, so far as appears, was unjustified. The insinuations, that "prejudices and bias" might have been contributing factors in reaching the verdict, that national clamor for the conviction of someone for the murder regardless of guilt might have contributed to Hauptmann's conviction, that evidence might have been framed by law enforcement agencies in response to a public demand that they make good, and that politics might have played a part in an alleged rushing of the condemned man to New Jersey while a political campaign was being conducted, for the political advantage of persons prominent in political life, were wholly unwarranted by any facts that have yet been disclosed.

On January 30th Governor Hoffman, in an open letter to Col. H. Norman Schwarzkopf, Superintendent of the New Jersey State Police, directed the superintendent, with every resource at his command, "To continue a thorough and impartial search for the detection and apprehension of every person connected with this crime," and in this letter stated that "there is evidence, abundant evidence, that other persons participated in the crime, and there is absolutely no reason why our law enforcement agencies should regard this case as closed." This letter was accompanied by a lengthy statement in which, among other things, the governor said:

"It seems impossible to believe the Lindbergh baby's thumb-guard lay in the road of the Lindbergh estate for a month before it was found by Betty Gow, the baby's nurse, as she was walking with Mrs. Elsie Whateley, widow of the Lindbergh butler."

"If Colonel Lindbergh was convinced that Dr. Condon had actually had contact with the kidnapers, why did he enter into negotiations with Curtis?"

"What did Curtis say, or show, to Colonel Lindbergh that warranted his belief that Curtis actually was in touch with the criminals?"

"After all, the ability of one man to build a ladder, to explore the territory, to ascertain that the Lindbergh family, for the first time, would be at Hopewell on a Tuesday night, to locate the nursery, to discover the one unfastened window, to write the ransom notes, to eradicate all finger prints, to enter the house from a ladder three feet short of the window, to remove and dispose of two-thirds of the money, and to evade all police agen-

cies for nearly two years without the aid or knowledge of any other person, is a matter only of conjecture."

"Why was Samuelson not called upon to testify when he says that Hauptmann ordered the wood cut for the ladder, but that two other men called for the completed work?"

"What changed Colonel Lindbergh's opinion that the crime was perpetrated by a 'gang'?"

These statements and the insinuations contained in these questions, particularly those pertaining to the irreproachable Colonel Lindbergh, are unwarranted by any facts yet disclosed, except assertions which the verdict has refuted, and they have served no purpose except to cast unfounded doubts upon the verdict in the case.

We voice no criticism of the action of the Governor in granting a reprieve or in making such investigations as he deemed proper in the exercise of the functions of his office, but we cannot justify aspersions, insinuations or charges made in connection therewith unless based upon fact or demonstrably probable proof.

After the granting of the reprieve the Governor continued his public comment on the case, at first devoting himself to a search for an accomplice, but later to an active campaign against witnesses responsible for Hauptmann's conviction, arraigning one after another of the witnesses for the State, particularly Dr. Condon, Millard Whited, Joseph Perrone, Amandus Hockmuth and Colonel Lindbergh.

We cannot find any justifiable purpose in this line of attack. The case was closed except perhaps for the possible power of the governor to grant a second reprieve, which he did not grant. Public and official attack on these witnesses at this stage of the case could serve no purpose except to discredit the verdict of the jury and the judgment of the court in finding and adjudging Hauptmann guilty.

CONCLUSION

In the foregoing we have tried to present salient facts. We have quoted from press reports which stand uncontradicted. We have quoted statements of persons present at the trial which were published with their own signatures in newspapers and magazines. We have verified these statements as to occurrences at the trial, as far as possible, by the record and by contact with persons who were present at the trial. We have reason to believe that press and magazine statements which we have quoted, as far as they purport to record facts, are reasonably accurate. Comments in

the press we have taken the liberty to criticise. We have been moved less by spirit of censure than by hope of remedial action. The excesses we have described differ from practices in many other cases mainly in degree.

The trial of a criminal case is a business that has for its sole purpose the administration of justice, and it should be carried on without distracting influences.

Passing from the general to the specific, we recommend:

1. That attendance in the courtroom during the progress of a criminal trial be limited to the seating capacity of the room.

2. That the process of subpoena or any other process of the court should never be used to secure preferential admission of any person or spectator; that such abuse of process be punished as contempt.

3. That approaches to the courtroom be kept clear, to the end that free access to the courtroom be maintained.

4. That no use of cameras or photographic appliances be permitted in the courtroom, either during the session of the court or otherwise.

5. That no sound registering devices for publicity use be permitted to operate in the courtroom at any time.

6. That the surreptitious procurement of pictures or sound records be considered contempt of court and be punished as such.

7. That during the trial of a criminal case the courtroom and the Court House be kept free from news distributing devices and equipment.

8. That newspaper accounts of criminal proceedings be limited to accounts of occurrences in court without argument of the case to the public.

9. That no popular referendum be taken during the pendency of the litigation as to the guilt or innocence of the accused.

• 10. That broadcasting of arguments, giving out of argumentative press bulletins, and every other form of argument or discussion addressed to the public, by lawyers in the case during the progress of the litigation be definitely forbidden.

11. That bulletins by the defendant issued to the public during the progress of the trial be definitely forbidden.

12. That public criticism of the court or jury by lawyers in the case during the progress of the litigation be not tolerated.

13. That featuring in vaudeville of jurors or other court officers, either during or after the trial, be forbidden.

14. That the giving of paid interviews or the writing of paid articles by jurors, either during or after the trial, be forbidden.

15. That public discussion in speeches, magazine articles or newspaper interviews, by witnesses, during the progress of the litigation and covering the subject matter thereof, should be forbidden.

16. That the atmosphere of the courtroom and adjacent premises be maintained as one of dignity and calm.

APPEAL TO NEWS DISTRIBUTORS

Excesses have been indulged in by the press in the publication of colored and sensational stories of criminal trials and in improper comment and argument upon the evidence and the occurrences of the trial. Improprieties have been indulged in by radio and screen producers, in the procurement of records and in giving distribution to improper appeals to the public and improper reflection upon court and jury during the pendency of criminal trials. The men engaged in the operation of the agencies mentioned are men of generally patriotic impulses and of generally high standards of business ethics. We believe that they will be found willing to co-operate in a movement to secure fair and reasonable restriction upon news procurement, distribution and comment, and we recommend that the American Bar Association take active measures through an appropriate committee to secure co-operation looking to that end.

The Public look to the members of the legal profession to set their house in order and they have a right to do so. Lawyers, by reason of their familiarity with legal proceedings and events incident to them and because of the participation in such proceedings, should take the lead in all measures calculated to secure the best administration of justice. The Hauptmann trial might well be the starting point for a proper movement, to chart out a course for the better regulation of criminal trials.

Respectfully submitted,
OSCAR HALLAM, Chairman,
St. Paul, Minnesota.
ALBERT J. HARNO,
Urbana, Illinois.
CHARLES P. TAFT, 2nd,
Cincinnati, Ohio.
JOHN KIRKLAND CLARK,
New York, New York.